

**OPINION  
75-219**

June 17, 1975           (OPINION)

Mr. R. James Maxson  
Assistant State's Attorney  
Ward County  
Minot, ND 58701

Dear Mr. Maxson:

This is in reply to your letter of June 6, 1975, in which you enclose a letter from Mr. Dave Senger, Administrative Assistant, Board of Ward County Commissioners.

Mr. Senger's letter calls attention to Senate Bill 2395 enacted by the recent Legislative Assembly. He states the following facts and questions:

"Ward County presently has Zoning Resolution No. 6 in use which requires a building permit for new construction or additions to an existing building within the zoned areas. Since the two mile area surrounding the city limits will no longer be within the zoned area of Ward County, will the County have the authority to continue issuing building permits? And, if not, will it become the duty of the City of Minot as of July 1, 1975, to issue permits within this area?

Since the construction season is just getting a good start by July 1, I anticipate many requests for building permits yet this summer, and would therefore, request an answer to the above questions at your earliest convenience."

We assume that the county is presently exercising zoning authority in this area by virtue of section 11-33-20 of the N.D.C.C. Prior to July 1, 1975, this section provides that the provisions of the county zoning adjacent to cities should not affect any property located within the limits of any incorporated municipality unless the municipality has relinquished its zoning authority to the county. Senate Bill 2395 amends this provision to provide:

"The provisions of this chapter shall not be construed to affect any property, real or personal, located within the zoning or subdivision authority of any city of this state. . ."  
(Emphasis supplied)

Section 2 of Senate Bill 2395 creates a new section to chapter 40-47 to provide that based upon the population of the city, as determined by the last official regular or special census, a city "may, by ordinance, extend the application of a city's zoning regulations. . . ." Since Minot is a city with a population of twenty-five thousand or more, the city could extend its zoning regulations to "unincorporated territory located within two miles of its limits in any direction."

Section 3 of the bill amends section 40-47-06 of the N.D.C.C. to

provide that the city zoning commission should also include three persons residing outside the corporate limits of a city having a population of twenty-five thousand or more "if zoning authority is exercised pursuant to section 2 of this Act."

Such additional members are to be appointed by the board of county commissioners of the county within which such zoning authority is to be exercised and must reside within the territorial limits of the zoning regulation authority exercised by this city, if such persons are available and will serve on the zoning commission.

It is clear from a reading of this bill that the city may extend its zoning authority to territory within two miles of its limits in any direction, if it so desires. It is not automatic or mandatory. The city must enact an ordinance in order to accomplish an extension of its zoning authority. That action cannot be taken until after July 1, 1975, the effective date of the bill. Until the city has enacted such an ordinance, we believe the county retains the zoning authority (assuming it has been exercising same pursuant to chapter 11-33 of the N.D.C.C.) even after July 1, 1975. If such ordinance is enacted, the city would issue permits after the effective date of the ordinance if its ordinance so requires. We do not believe the county would any longer have jurisdiction to issue permits in this area, since section 11-33-18 of the N.D.C.C. provides that the board of county commissioners is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, erection, reconstruction, alteration, repair, or enlargement of any building or structure "otherwise subject to the provisions of this chapter. . ." Since the buildings would, if the city determines to exercise zoning authority pursuant to Senate Bill 2305, no longer be subject to chapter 11-33 of the N.D.C.C., county zoning adjacent to cities, that provision would not apply.

We would further note that two miles is the absolute limit of authority granted cities by the bill. The city could determine, by its ordinance, to exercise zoning authority within an area less than two miles.

I trust this will satisfactorily set forth our position on the question.

Sincerely,

ALLEN I. OLSON

Attorney General