

OPINION
76-67

August 5, 1976 (OPINION)

Mr. Mervin Nordeng
Cass County State's Attorney
P.O. Box 2806
Fargo, ND 58102

Dear Mr. Nordeng:

In your letter of July 8, 1976, you set forth the following:

I would like to request your opinion regarding the following situation.

The City of Fargo, together with other cities in Cass County, and together with the County of Cass, are investigating the possibilities of establishing some type of an area wide garbage and trash collection system. Such a program is regulated by the powers found in Section 11-11-14(14) and Section 23-29-06 of the North Dakota Century Code. These statutes would apparently authorize the joint exercise of governmental powers by Cass County and the various cities within the county.

The question that I am particularly concerned about would be whether the County of Cass, together with the various cities in Cass County, could exercise this power in conjunction with the City of Moorhead, the County of Clay County, Minnesota, and various other cities in the State of Minnesota.

I am aware that in certain instances, one of which I note pertains to the construction of bridges, the legislature has specifically authorized cities and counties of our state to exercise governmental powers in conjunction with the cities and counties of adjoining states.

In this particular situation, however, we don't have this specific authorization, and I note, what appears to be, a hint of such authorization in Section 54-40-01, wherein, the term governmental unit is defined as including states and United States government.

This would appear again to be a hint that we could enter into an agreement with cities and counties of another state. However, in reading the first sentence of that paragraph I am left to wonder as to whether or not this Section applies only to the constructing and maintaining of buildings. Section 54-40-01, also, appears to be somewhat in conflict with Section 54-40-08(1) of the North Dakota Century Code where the legislature has specifically used the language "of this state" in authorizing municipalities, counties, etc., to carry out any function or duty which may be authorized by law.

Again, to restate my specific question, can the County of Cass, together with the various cities in Cass County, enter into a

regional solid waste management agency or program, which includes cities and counties in the State of Minnesota.

North Dakota Century Code Section 11-11-14 provides in part:

POWERS OF BOARD OF COUNTY COMMISSIONERS. - The board of county commissioners shall have the following powers:

* * *

4. To establish a garbage and trash collection system encompassing all or any part of the territory of the county. The words "garbage and trash collection system" shall include the operation and maintenance of one or more sanitary landfill sites, or other types of processing sites for the disposal of trash and garbage. The board may operate such system in cooperation with any one or more political subdivisions in accordance with the provisions of chapter 54-40. The board may borrow money by issuing certificates of indebtedness, repayable from fees or special assessments, or both, which may be charged to the proper parcels of land or to persons receiving the direct benefits of the garbage and trash collection system, or repayable in such other manner as may be provided by law, in order to purchase the initial equipment and land necessary for operation of the system. If the board of county commissioners resolves to establish such a system, the expenses of establishing, operating, and maintaining it may be financed by fees charged to persons receiving direct benefits or by special assessment against the parcels of land properly charged therewith, or by both such fees and assessments. The assessment may be made, published, altered, appealed from, and confirmed under the procedures set forth in chapter 11-28.1.

North Dakota Century Code 54-40-01 provides:

AGREEMENT. - Two or more governmental units or municipal corporations having in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised for the purpose of acquiring, constructing and maintaining any building for their joint use. The term "governmental unit" as used in this action includes and means every city, county, town, park district, school district, states and United States governments and departments of each thereof, and all other political subdivisions even though not specifically named or referred to herein.

There is no doubt that pursuant to Section 54-40-01, as quoted above, that cooperation by political subdivisions of this state with contiguous political subdivisions of adjoining states is permissible as it relates to buildings.

North Dakota Century Code Section 54-40-08(1) provides:

Any municipality, county, park district, school district, or other political subdivision of this state, upon approval of its respective governing body, may enter into agreements with one another for joint or cooperative action, on a cost-sharing basis, or otherwise to carry out any function or duty which may be authorized by law or assigned to one or more of them, and to expend funds of such municipality, county, park district, school district, or other political subdivision pursuant to such agreement, to use unexpended balances of the respective current funds, to enter into lease option to buy and contract for deed agreements between themselves and with private parties, and to accumulate funds from year to year for the provision of services and facilities, and to otherwise share or contribute property in accordance with such agreement jointly and cooperatively carrying out such function or duty.

The position of this office on the interpretation of the aforesaid language, was set forth in a letter written by then First Assistant Attorney General Paul M. Sand, to Robert L. Striebel, State's Attorney of Slope County, dated November 27, 1972. The issue at that time was the permissibility of weather modification boards of Adams, Bowman, Hettinger and Slope Counties, North Dakota, entering into a contract jointly with a licensed weather modification contractor. Inquiry further related to the permissibility of the indicated weather modification board entering into a contract with the state of South Dakota. After reciting the provisions of Section 54-40-08, the letter set forth the following:

Under this provision any county that has authority to perform a certain function or duty may join together and perform such act or duty jointly. This contemplates that governmental bodies work out a detailed program as to the sharing of costs and all other matters that will need to be resolved. This in effect means that counties would have to work out the details under which the duty and function will be jointly carried out.

* * *

As to the entering into a contract jointly with a weather modification board within the State of South Dakota, we have serious reservations whether Section 54-40-08 would extend to governmental bodies other than those of the State of North Dakota. Until there is a clarification to extend the provisions of said section to governmental bodies or political subdivisions of another state, we would be compelled to conclude that it does not apply to governmental bodies of another state. In addition to this, South Dakota law would apply to its counties.

Therefore we conclude, that interstate, intergovernment cooperation is authorized by 54-40-01, provided the territory or border requirements are met, and provided such cooperation is limited to the acquisition, construction and maintenance of any building for their joint use. On the other hand, Section 54-40-08, does not authorize joint exercise of governmental functions with any other state or with

the subdivisions of any other state.

In 1975, the North Dakota Legislative Assembly adopted the Solid Waste Management and Land Protection Act, which has been codified as chapter 23-29 of the North Dakota Century Code, Section 23-29-06 provides:

REGIONAL SOLID WASTE MANAGEMENT. - Cities, townships, counties, and agencies, and any combination thereof, may by ordinance or contract join in a regional solid waste management agency or program.

While the general rule of construction, would be that the reference to "cities, townships, counties, and agencies" would refer only to subdivisions of this state, we have pursued analysis of these words deep into the legislative history of the section, looking for some manifestation of legislative intent that the reference was intended to include subdivisions of other states. The Solid Waste Management Act adopted in 1975 was first introduced in 1973. In the committee hearing on the bill, found in the Minutes of the Senate Natural Resources Committee, February 2, 1973, at 5, the following discussion is found:

Senator Roen asked if they copied a model Act on this? Mr. Van Heuvelen stated this was copied from the Council of State Government, but was simplified (sic).

The Council of State Governments, 1973 Suggested State Legislation, "State Solid Waste Management and Resource Recovery Incentives Act" provided:

Section 7.

(a) Municipalities with contiguous territories within or adjacent to this state may, by ordinance or contract, join in an intermunicipal solid waste management agency. . . .

Section 3(14) of the model act contains the following definition:

"Municipality" shall mean a town, village, city, county, district, or other public bodies created by or pursuant to state law. . . .

Thus in the "simplification" of the language in arriving at the North Dakota bill, the express language of the model act authorizing cooperation with political subdivisions without the state was eliminated.

In the Minutes of the House Natural Resources Committee , February 23, 1973, at 1, we find:

VAN HEUVELEN said there are 412 refuse sites scattered around our state and if these could combine into regional agencies, the cost would be about \$1.60 or so that people would have to pay to have garbage picked up and taken to a landfill.

The Legislative Council Staff Analysis in both 1973 and 1975

contained the same reference to regionalization:

Political subdivisions may join and create regional solid waste management agencies.

Thus, the legislative history of the regionalization provision of the Solid Waste Management Act contains no indication contradictory to the presumption and standard construction that the regional authorization refers to only subdivisions of the state.

North Dakota Century Code Section 40-34-01 provides:

DISPOSAL OF GARBAGE OR SEWAGE IN MUNICIPALITIES - ACQUIRING LAND. - Any municipality in this state, either individually or jointly by agreement, may own, acquire, construct, equip, extend, and improve, operate, and maintain, either within or without the corporate limits of the municipality, intercepting sewers, including pumping stations, a plant or plants for the treatment, purification, and disposal in a sanitary manner of the liquid and solid wastes, sewage, and night soil of the municipality, or a plant or system for the disposal of the garbage thereof, and may issue bonds therefor as herein prescribed. Any municipality may acquire by gift, grant, purchase, or condemnation necessary lands therefor, either within or without the corporate limits of the municipality and within or without the state of North Dakota. Municipalities may invoke and shall have all the rights and privileges granted to public corporations under existing laws with reference to eminent domain for the purpose of acquiring land for the uses mentioned in this section. Any municipality which has outstanding bonds issued pursuant to this chapter may issue additional bonds by the procedure herein prescribed for the purpose of refunding all or any part of such outstanding bonds, whether at or prior to maturity, or for the purpose of providing moneys to be deposited in escrow for the purchase or redemption of such bonds at or prior to maturity. Bonds issued for any of the purposes referred to herein may be combined in a single issue.

While this section authorizes solid waste disposal outside of this state, it does not authorize joint operation of solid waste disposal with political subdivisions of another state.

North Dakota Century Code Section 40-35-03 provides in part:

POWER OF MUNICIPALITIES. - Any municipality, in addition to the powers prescribed elsewhere by the laws of this state, shall have the power to:

* * *

5. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties or in order to secure the payment of its bonds, but no encumbrance, mortgage, or other pledge of property of the municipality shall be created by any such

contract or instrument;

* * *

Therefore, we believe that any municipality of the state of North Dakota has the authority to contract in order to provide for its solid waste management needs. Such a contract could be made with persons or with other governmental entities, provided such other governmental entities have the authority to enter into such contract. By this we mean they could contract with the governmental entities outside of this state provided the laws and ordinances of such other state and subdivision permit such contracting. On the other hand, we do not believe that the subdivisions of the state of North Dakota have the authority to agree by contract or ordinance to jointly or separately conduct the solid waste management functions of other governmental entities, except in conformity and as authorized by the previously discussed sections.

In summary, we would state that cooperation and joint action solid waste management activities are permitted and permissible within the confines of the law as noted. Specifically, Cass County and various cities within Cass County could join together in a county solid waste management system, or could join together to form a "regional solid waste agency". Municipalities of this state can by contract retain persons or subdivisions of other states (if such other subdivisions are empowered to enter such contracts) to collect and dispose of its solid wastes. Political subdivisions of this state are not, however, empowered to contract to provide subdivisions of other states, nor to enter into any regional agency, system or joint exercise of powers or functions which would include such activity; except that political subdivisions of this state, including regional solid waste management agencies can join with empowered subdivisions of other states, provided all subdivisions in any joinder have contiguous borders, for the purpose of acquiring, constructing and maintaining for their joint use any building, including an incineration plant.

We trust these observations adequately set forth our position on this issue and are of some assistance and guidance to you.

Sincerely,

ALLEN I. OLSON

Attorney General