

OPINION
77-14

April 15, 1977 (OPINION)

Mr. Aloys Wartner III

City Attorney

City of Harvey

Harvey, ND 58341

Dear Mr. Wartner:

This is in response to your letter dated March 30, 1977. In that letter you set out the following:

I would like an opinion based upon section 40-20-05 of the North Dakota Century Code as amended. I would like to know whether or not this section would allow police officers from the City of Harvey to patrol the highway from a distance of 1 1/2 miles beyond the city limits and issue traffic tickets for a traffic violation, or whether the section should be interpreted to mean they are limited to serving process issued by a magistrate.

Section 40-20-05 of the North Dakota Century Code sets out the powers and duties of city police officers, and is quoted herewith as follows:

CHIEF OF POLICE AND POLICE OFFICERS - POWERS AND DUTIES. The chief of police shall perform such duties as shall be prescribed by the governing body for the preservation of the peace. The chief of police shall have the authority to administer oaths to police officers under his supervision. Within the city limits, and for a distance of one and one-half miles in all directions outside the city limits, the police officers and watchmen of the city shall perform the duties and exercise the powers of peace officers as defined and prescribed by the laws of this state. They shall serve and execute any warrant, writ, process, order, or notice issued to them by a police magistrate within the city in any civil or criminal action or proceeding for or on account of a violation of any city ordinance or in any action or proceeding in which the city is a party or is interested beneficially. The police, within the limits prescribed in this section, may serve and execute all writs and process issued by justices in civil actions. In addition to the duties set out in this section, the police shall perform such other duties as may be prescribed by ordinance or statute. (Emphasis added)

In addition to 40-20-05, N.D.C.C., quoted above, subsection 2 of section 40-06-01 establishes the extent to which municipal jurisdiction extends in the enforcement of city ordinances. That subsection is quoted herewith as follows:

JURISDICTION OF GOVERNING BODY. Except as otherwise provided by law, a governing body of a municipality shall have jurisdiction:

* * *

2. In and over all places within one-half mile of the municipal limits for the purpose of enforcing health and quarantine ordinances and regulations and police regulations and ordinances adopted to promote the peace, order, safety, and general welfare of the municipality.

With these statutes in mind, this office has consistently held that a police officer employed by a city enjoys peace officer authority to enforce state law for a distance of up to one and one-half miles in all directions outside the city limits of such city. However, pursuant to subsection 2 of section 40-06-01, N.D.C.C., city police officers have jurisdiction to enforce municipal ordinances only within one-half mile outside the city limits.

Accordingly, in direct response to your question, it is the opinion of this office that section 40-20-05 of the North Dakota Century Code allows city police officers to patrol the highways for a distance of one and one-half miles beyond the city limits and to issue traffic tickets for traffic violations of state law occurring both within the city limits and up to a distance of one and one-half miles beyond the city limits. However, if your factual situation contemplates that the city police officers will be issuing citations for traffic offenses which are violative of city ordinances only, such police officer's jurisdiction is limited to enforcing those ordinances only for a distance of up to one-half mile outside the city limits.

Certainly the governing body of a city may, by city ordinance, policy or otherwise, place reasonable limitations upon the extent and manner in which its police officers may go in enforcing either state law or city ordinances. Nevertheless, unless a city ordinance speaks to the contrary, the sections of state law quoted above express the jurisdictional limits of authority placed upon police officers for enforcing either state law or municipal ordinances, as the case might be.

Your letter additionally asks whether section 40-20-05, N.D.C.C., should be interpreted to mean that a police officer is limited to serving process issued by a magistrate within the one and one-half mile limits expressed in that statute. We can find no such interpretation which would limit the police officer's authority outside the city limits and up to one and one-half miles beyond the city limits to the serving of process only. Section 40-20-05 clearly expresses the view that the police officer's authority within the city is to "perform the duties and exercise the powers of peace officers as defined and prescribed by the laws of this state". In addition the statute spells out that the police, within the distances prescribed by the statute, may also serve process. Such a statement, in our opinion, is in addition to and not in lieu of the authority stated earlier in the statute that indicates police officers have all the powers of peace officers within the measured distances set out in the statute and their authority is not limited, within that

geographic area, only to the serving of process.

Sincerely,

ALLEN I. OLSON

Attorney General