

OPINION

77-17

December 7, 1977 (OPINION)

Mr. Mike L. Halpern

City Attorney

City of Glen Ullin

Glen Ullin, ND 58631

Dear Mr. Halpern

This is in response to your letter to this office dated November 22, 1977. In that letter you set out certain portions of Sections 40-20-05, 40-18-01 and 40-06-01 of the North Dakota Century Code, all relating to the jurisdiction state law grants to cities in terms of the enforcement of city ordinances. You then quote from Section 1.0101 of the city ordinances of your city which you state to be as follows:

"The jurisdiction of the City of Glen Ullin, North Dakota extends to all persons, places and property within its boundaries and such extraterritorial jurisdiction as is granted to it under the provisions of the North Dakota Century Code and amendments thereto."

You conclude by asking two specific questions with regard to law enforcement and municipal judge jurisdiction within city limits, as follows:

1. If a municipal police officer arrests a person for speeding or driving while under the influence of alcohol and the city has an ordinance covering such violations, and said violation occurs one-fourth mile outside the city limits, may the arrestee be cited into the municipal court of said city and properly tried by the municipal judge? In other words, does the city judge have jurisdiction?
2. Given the same facts as No. 1 above, except, the violation occurs 1 mile outside the city limits, does the city judge have jurisdiction?

We agree that the three statutory provisions which you cite must necessarily be relied upon in resolving your questions. The relevant portions of Section 40-20-05 of the North Dakota Century Code are quoted herewith as follows, with specific portions emphasized.

40-20-05. CHIEF OF POLICE AND POLICE OFFICERS - POWERS AND DUTIES - HOT PURSUIT.

1. 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.

* * *

3. Police officers shall serve and execute any warrant, writ, process, order, or notice issued to them by a municipal judge 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 of 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 supplied)

Section 40-18-01, N.D.C.C., sets out the jurisdiction of municipal judges in the state of North Dakota, and is quoted herewith as follows:

40-18-01. JURISDICTION OF MUNICIPAL JUDGE. The municipal judge within a city having a population of three thousand or more shall be an attorney licensed to practice law in this state, unless no person so licensed is available in the city and shall have exclusive jurisdiction of, and shall hear, try and determine, all offenses against the ordinances of the city. The offices of county justice and municipal judge may not be held by the same person. (Emphasis supplied)

Section 40-06-01, N.D.C.C., establishes and limits the jurisdiction granted to municipalities, and in relevant part, is quoted herewith as follows:

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

* * *

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. (Emphasis supplied)

As a matter of general law, municipalities of the state of North Dakota have only such authority as the state legislature chooses to grant. State ex rel. Dreyer v. Brekke, 28 N.W.2d. 598; Fradet v. City of Southwest Fargo, 59 N.W.2d. 871; Uika v. Sturdevant, 65 N.W.2d. 292; Parker Hotel Company v. City of Grand Forks, 177 N.W.2d. 764. By reference to the above quoted sections, as well as related case law, it is clear the state legislature has limited the

jurisdiction of both city police officers and municipal judges to certain geographic areas in and around the physical limits of the municipality.

In particular, Section 40-06-01(2) clearly states that the maximum geographic jurisdiction granted to any municipality in this state for the purpose of enforcing ordinances described in that subsection is within the boundaries of the municipality and up to a distance of one-half mile beyond those limits. Consequently, an ordinance contemplated by that section, which may include appropriate traffic ordinances (See Section 39-09-03 for some limitations on a city's authority to enact speeding ordinances), may not be drafted so as to extend the city's authority beyond a distance of one-half mile from the boundaries of the city.

In terms of municipal court jurisdiction, Section 40-18-01, N.D.C.C., makes it clear that a municipal judge has only such jurisdiction to hear, try and determine offenses which are violations of municipal ordinance. That being the case, and a city having only such authority to adopt and enforce those municipal ordinances permitted by state law and whose jurisdiction does not exceed the limits specified in 40-06-01, it appears the answer to your first question is in the affirmative. It is therefore our opinion that if a municipal police officer arrests a person for speeding or driving while under the influence of alcohol (or any other valid city ordinance affecting the peace, order, safety or general welfare of the municipality) and the city has adopted an ordinance covering such violation, the person arrested may be cited into municipal court and properly tried by the municipal judge where the offense occurred either within the city limits, or up to one-half mile beyond the city boundaries. In such a case, the municipal judge would have jurisdiction.

With regard to your second question, it is our opinion that if the violation of city ordinance occurs more than one-half mile outside of the city limits, a municipal judge has no jurisdiction to hear, try or determine such violation. The conflict seems to arise with the language of Section 40-20-05, which gives to city police officers, the authority to perform as law enforcement officers within the city limits and up to a distance of one and one-half miles beyond the city limits. It appears that while the state legislature has determined it necessary to grant "peace officer" status to city police officers up to a distance of one and one-half miles beyond the city limits, that jurisdiction only affects their status as law enforcement officers in general, and does not extend the jurisdictional limits set out in Section 40-06-01(2), N.D.C.C.

Stated in different terms, a review of the three sections quoted above, and in particular Section 40-20-05, reveals that the police officers possess "peace officer" authority up to that specified one and one-half mile limitation. Beyond the one and one-half mile limitation, a city police officer has no law enforcement authority to enforce either state law or municipal ordinance, absent some other special law enforcement status that may be granted to such officer, such as special deputy sheriff status.

Between the one and one-half mile distance and the one-half mile

distance beyond city borders, a city police officer has authority as a peace officer to enforce violations of state law as such, but has no jurisdiction to enforce, as a peace officer, violations of municipal ordinances. In such a case, the appropriate county level court possesses the appropriate jurisdiction to try the case, rather than the municipal court. Within the city limits, and up to a distance of one-half mile beyond the city limits, a city police officer possesses "peace officer" status for the enforcement of valid municipal ordinances, as well as state law.

In summary, it is our opinion that the response to your first question is in the affirmative, and the response to your second question is in the negative.

Sincerely,

ALLEN I. OLSON

Attorney General