

LETTER OPINION
80-35

November 5, 1980 (OPINION)

Mr. Robert A. Keogh
Slope County State's Attorney
Amidon, North Dakota 58620

Dear Mr. Keogh:

This is in response to your letter of October 9, 1980, concerning the duties of the Slope county sheriff and possible contractual arrangements which may be entered into between the county and incorporated cities for the purpose of providing police protection. Your letter sets forth the following questions:

1. What duties, responsibilities, or authority does the sheriff have in an incorporated city that employs its own police chief that has no local ordinances?
2. Under what circumstances may a county contract with a city to provide policing by county deputies?
3. In the absence of a specific contract to provide complete policing for a city, may a county charge an incorporated city for policing services furnished by the county even where there is a city employed police chief?
4. Can a county contract with a city to provide specific policing services, which would generally be at the request of the local police chief, and require the city to compensate the county for such services?

A sheriff is the chief law enforcement officer of the county. The general powers and duties of a sheriff are enumerated in section 11-15-03 of the North Dakota Century Code which provides as follows:

11-15-03. DUTIES OF SHERIFF. The sheriff shall:

1. Preserve the peace.
2. Arrest and take before the nearest magistrate, or before the magistrate who issued the warrant, all persons who attempt to commit or who have committed a public offense.
3. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge.
4. Attend each term of the district court held within his county; obey its lawful orders and directions; and act as crier thereof and make proclamation of the opening and adjournment of court and of any other matter under its direction.
5. Command the aid of as many male inhabitants of his county

as he may think necessary in the execution of his duties.

6. Take charge of and keep the county jail and the prisoners therein.
7. Endorse upon all notices and process received by him for service the year, month, day, hour, and minute of reception, and issue therefor to the person delivering it, on payment of his fees, a certificate showing the names of the parties, the title of the paper, and the time of its reception.
8. Serve all process or notices in the manner prescribed by law.
9. Certify under his hand upon each process or notice the time and manner of service, or if he fails to make service, the reasons for his failure, and return the same without delay.
0. Perform such other duties as are required of him by law.
1. Enforce, personally or through his deputies, all statutes defining traffic violations denominated noncriminal by section 39-06.1-02.

In accordance with section 11-15-03, N.D.C.C., the county sheriff is under a statutory duty to preserve the peace within the scope of the respective jurisdiction. See 70 Am. Jur.2d., sheriffs, police, and constables <21 (1973). The fact that an incorporated city within the county also employs its own police chief is of little significance, and would not detract from the general powers, duties, and responsibilities expressly conferred upon the sheriff by statute.

You indicated in your letter that the Slope County sheriff or his deputies have been called into small, incorporated cities within the county on several occasions to provide enforcement assistance. Your question concerns the ability of the county to charge the city for such services. It is our opinion that, in the absence of a specific contractual arrangement or agreement between the county and city, the county would have no statutory authority to charge an incorporated city within the county for police enforcement services provided therein.

Section 11-15-02 of the North Dakota Century Code provides for the appointment of special deputies by the sheriff and is supportive of our opinion to the extent so indicated:

11-15-02. SHERIFF MAY APPOINT SPECIAL DEPUTIES - COMPENSATION. In case of any emergency, the sheriff may appoint and qualify special deputies in such numbers as in his judgment are required by the conditions. Each special deputy shall receive compensation for his services and the same mileage as is allowed to regular deputies, such amounts to be paid by the county. The sheriff shall have the sole power of appointing such special deputies and may remove them at pleasure. (Emphasis added).

Section 11-15-02, N.D.C.C., reveals that the compensation and mileage to be paid to special deputies are to be paid by the county, and therefore, it is our opinion that in the absence of a specific contractual agreement, the county would also be unable to charge a city for services rendered by a special deputy appointed by the sheriff. Nevertheless, the county and the city do have the statutory authority to enter into a valid contract to provide for and receive police enforcement services. See chapter 54-40, N.D.C.C.

Section 54-40-01 of the North Dakota Century Code provides for the joint exercise of governmental powers by agreement and states as follows:

54-40-01. 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.

Any municipality or county of this state, upon approval of its governing body, may enter into such agreements with one another to carry out any function or duty authorized by law or assigned to one of them. Section 54-40-08, N.D.C.C. The agreement need only state the purpose of the arrangement or the respective powers to be exercised, and it shall further provide for the means by which the purpose shall be accomplished or the manner in which the powers shall be exercised. section 54-40-02, N.D.C.C.

It is our opinion that, pursuant to the pertinent provisions of chapter 54-40 of the North Dakota Century Code, a county could lawfully contract with a small, incorporated city for the purpose of providing additional police enforcement assistance for other than routine patrol-type duties. For example, a county could contract with a city to provide special enforcement assistance on a certain number of nights and/or hours per week, i.e., Friday and Saturday evenings, or on certain special occasions when the city anticipates that added assistance may be necessary under the circumstances. The purpose of the arrangement and the powers to be exercised would need to be set forth in the contract agreement. However, as indicated earlier, it is our opinion that, in the absence of a specific contractual agreement, the county could not charge a city within the county for police enforcement services provided therein by the county sheriff or his deputies.

We hope that the foregoing information will be of assistance to you.

Sincerely,

ALLEN I. OLSON

Attorney General