

Office of the Attorney General  
State of North Dakota

Opinion No. 82-66

Date Issued: August 31, 1982

Requested by: Wes Argue  
Pembina City Attorney

--QUESTION PRESENTED--

Whether a city has the authority to enact an ordinance providing for the impoundment of an unregistered motor vehicle which has been operated upon the city streets or city-owned property.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a city does not have the authority to impound an unregistered motor vehicle which has been operated upon the city streets or city-owned property.

--ANALYSIS--

Municipal corporations, with the exception of home rule cities and villages, are creatures of statute deriving their powers from the legislature under the authority of Article VII, Section 1, of the North Dakota Constitution. The pertinent part of Section 1 states:

Except in the case of home rule cities and villages as provided in this section the legislative assembly shall provide by general law for the organization of municipal corporations, restricting their powers as to levying taxes and assessments, borrowing money, and contracting debts. . . .'

The legislature has enacted a specific statute applicable to the imposition of fines and penalties that may be imposed for the violation of the city's traffic ordinances. Section 40-05-08(2) of the North Dakota Century Code provides:

For every violation of a city ordinance regulating the operation or equipment of motor vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, a fee may be established, by ordinance, which shall not exceed the limits, for equivalent categories of violations, set forth in section 39-06.1-08.

Since the legislature has expressly defined the penalties that may be imposed by a city for the violation of its traffic ordinances, the city would have no authority to broaden or expand upon the penalties so provided. The North Dakota Supreme Court in *Lang v. City*

of Cavalier, 228 N.W. 819 (N.D. 1930), defined the standards whereby a city's exercise of its legislative powers could be judged. The court stated that:

A municipal corporation is an agency of the state. It is purely a creature of statute. Constitution, § 130. It takes its powers from the statutes which give it life, and has none which are not either expressly or impliedly conferred thereby or essential to effectuate the purpose of its creation. In defining its powers, the rule of strick construction applies, and any doubts as to their existence or extent must be resolved against the corporation. . . . 228 N.W. 819, 822.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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