

Date Issued: June 14, 1983 (AGO 83-23)

Requested by: Jack Jansen, State Fire Marshal

- QUESTION PRESENTED -

Whether section 18-01-02 or 18-01-07 of the North Dakota Century Code, impose a primary duty on the State Fire Marshal to physically conduct investigations of the cause and origin of fires occurring in North Dakota.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that neither section 18-01-02 nor section 18-01-07, N.D.C.C., impose a primary duty on the State Fire Marshal to physically conduct investigations of the cause and origin of fires occurring in North Dakota.

- ANALYSIS -

Sections 18-01-02 and 18-01-07, N.D.C.C., provide, respectively, as follows:

18-01-02. DUTIES OF FIRE MARSHAL AND DEPUTY FIRE MARSHAL. The state fire marshal and his deputy or deputies shall enforce all the laws of the state providing for:

1. The prevention of fires.
2. The storage, sale, and use of combustibles and explosives.
3. The installation and maintenance of automatic or other fire alarms and fire extinguishing equipment.
4. The means and adequacy of exits in case of fires from churches, schools, hospitals, hotels, halls, theaters, amphitheatres, and all other places in which numbers of persons congregate from time to time for any purpose.
5. The suppression of arson and the investigation of the cause and origin of fires. (Emphasis supplied).

18-01-07. STATE FIRE MARSHAL MAY DIRECT INVESTIGATION - REPORT OF INVESTIGATION - RECORDS IN FIRE MARSHAL'S OFFICE. An investigation of each fire shall be made by the officers required to report the occurrence of fires under section 18-01-06. The state fire marshal shall furnish blanks upon which reports of investigations of fires shall be submitted and, when he deems it expedient or necessary, he may supervise and direct any of such investigations. Within one week after the

occurrence of a fire, the officer investigating it shall furnish to the state fire marshal a written report containing a statement of the facts relating to the cause and origin of the fire and such other information as the fire marshal may require. The state fire marshal shall keep in his office a record of all fires occurring in the state together with the facts, circumstances, and statistics in connection therewith and showing the origin of such fires as the same may be determined from the reports filed in his office. (Emphasis supplied).

The State Fire Marshal has the primary responsibility to ensure that all state and local laws relating to the investigation of the cause and origin of fires are complied with, including those investigations conducted by local as well as state officials. The North Dakota Supreme Court, in *Runge v. Glerum*, 164 N.W. 284 (N.D. 1917), recognized the general responsibility placed upon the Fire Marshal by section 18-01-02, N.D.C.C., when it stated:

Section 2 of the act, being section 202 of the Compiled Laws of 1913 (now codified as 18-01-02, N.D.C.C.) makes it the general duty of the fire marshal . . . to enforce the laws in respect to fires. 164 N.W. 284, 286 (Emphasis supplied).

This office, in a May 15, 1962, opinion issued to W. Van Heuvelen as Executive Officer of the State Department of Health, concurred with the conclusions of the Court in *Runge* with respect to the State Fire Marshal's duties.

The general duty of enforcement mandated by section 18-01-02, N.D.C.C., does not inescapably lead to the conclusion that the State Fire Marshal is required to physically investigate all fires occurring in North Dakota in order to discharge his statutory obligation. On the contrary, the Legislature, through the enactment of section 18-01-07, N.D.C.C. clearly evinced its intent to place a primary investigatory obligation with respect to the cause and origins of fires in the hands of the local officials.

Section 18-01-07, N.D.C.C., in relevant part, provides as follows:

An investigation of each fire shall be made by the officers required to report the occurrence of fires under section 18-01-06. The state fire marshal shall furnish blanks upon which reports of investigations of fires shall be submitted and, when he deems it expedient or necessary, he may supervise and direct any of such investigations. (Emphasis supplied).

Meanwhile, section 18-01-06, N.D.C.C., lists local officials who are required to report the occurrence of fires which includes the fire chief of a city or rural fire protection district if a fire department exists in such city or district. If a fire department is not maintained in the city or fire protection district, then the auditor of the city or the secretary of the rural fire protection district is required to report the occurrence of fires to the State Fire Marshal.

A well-recognized rule of statutory construction is that words used in a statute are to be understood in their ordinary sense unless a contrary intention plainly appears. Section 1-02-02, N.D.C.C. In addition, the word "may" as used in its ordinary meaning in a statute is permissive. *Harding v. City of Dickinson*, 33 N.W.2d. 626 (N.D. 1948). However, the use of the word "shall" in a statute usually imparts a mandatory or compulsory effect. See *Northwestern Bell Telephone Company v. Wentz*, 103 N.W.2d. 245 (N.D. 1960).

Thus, applying the above rules of statutory construction to the legislatively delegated investigatory responsibilities contained in section 18-01-07, N.D.C.C., reveals that the local officials enumerated in section 18-06-01, N.D.C.C., have the primary and mandatory duty to initially conduct the investigations of the cause and origin of fires in the State of North Dakota with the State Fire Marshal's duty only arising if and when, in his discretion, he deems such supervision and direction to be expedient or necessary.

Chapter 18-01, N.D.C.C., does not indicate under what circumstances it would be necessary or expedient for the State Fire Marshal to direct and supervise an investigation. However, a prime consideration for determining whether the State Fire Marshal should intervene in such investigation might be whether the State Fire Marshal's general duty of enforcement would likely be undermined if he failed to act.

- 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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