

Date Issued: July 21, 1983 (AGO 83-28)

Requested by: Wayne O. Solberg, Fargo City Attorney

- QUESTION PRESENTED -

Whether section 25-16-14 of the North Dakota Century Code would prevent the City of Fargo from enforcing a zoning regulation which prohibits the establishment of a home for teenage alcoholics in a residential district.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that section 25-16-14, N.D.C.C., does not prevent the City of Fargo from enforcing a zoning regulation which prohibits the establishment of a home for teenage alcoholics in a residential district.

- ANALYSIS -

Section 25-16-14, N.D.C.C., was clearly intended to prevent political subdivisions from using zoning regulations to preclude the establishment of group homes for developmentally disabled persons within residential areas. It has application only if the home for teenage alcoholics is a "group home," and the residents are "developmentally disabled persons," as those terms are defined in section 25-16-14(1), N.D.C.C.

While it is likely that the facility housing a home for teenage alcoholics would be in some sense a "group home," section 25-16-14, N.D.C.C., requires the group home to be "for developmentally disabled persons." A "developmentally disabled person" is defined as a person with "a severe, chronic disability which:

- a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- b. Is manifested before the person attains age twenty-two;
- c. Is likely to continue indefinitely;
- d. Results in substantial functional limitations in three or more of the following areas of major life activity:
  - (1) Self-care;
  - (2) Receptive and expressive language;
  - (3) Learning;
  - (4) Mobility;
  - (5) Self-direction;
  - (6) Capacity for independent living; and
  - (7) Economic sufficiency; and
- e. Reflects the person's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are lifelong or extended duration and are individually planned and coordinated."

It is possible that a developmentally disabled person may also be an alcoholic, perhaps even a teenage alcoholic. However, it is extremely unlikely that alcoholism will be so manifest as to bring a sufferer, still in his teen years, within the definition of a developmentally disabled person. No part of the legislative history surrounding this statute suggests that such persons were contemplated by the Legislature when it considered the bill. The zoning authority of the City of Fargo, with respect to the location of a home for teenage alcoholics, is not limited by section 25-16-14, N.D.C.C.

- 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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