

Date Issued: June 23, 1987 (AGO 87-11)

Requested by: F.C. Rohrich, Emmons County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a county is liable for jury and jail costs incurred as a result of a trial in county court of a violation of a city ordinance when the city and county have entered into an agreement pursuant to section 8 of Senate Bill 2040.

II.

Whether a county is liable for jury and jail costs incurred as a result of a trial in county court of a violation of a city ordinance when such ordinance violation has been transferred to the county court for jury trial pursuant to section 11 of Senate Bill 2040.

III.

Whether all counties participating in a multicounty agreement sharing a county judge pursuant to N.D.C.C. section 27-07.1-02 must approve an agreement with a city pursuant to section 8 of Senate Bill 2040.

IV.

Whether, absent an agreement to contrary, the county's thirty-five percent share of fees, fines, costs, forfeitures, and any other monetary consideration collected pursuant to section 11 of Senate Bill 2040 must be shared among all counties who participate in a multicounty agreement pursuant to N.D.C.C. section 27-07.1-02 or whether such fund may be retained by the county in which the jury trial was conducted.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that the agreement between the city and county will define the responsibility and sharing of jury and jail costs incurred as a result of a trial in county court of a violation of a city ordinance when the city and county have entered into an agreement pursuant to section 8 or Senate Bill 2040.

II.

It is further my opinion that the county is liable for jury costs but not jail costs incurred as a result of a trial in county court of a violation of a city ordinance when such ordinance has been transferred to county court for jury trial pursuant to section 11 of Senate Bill 2040.

III.

It is further my opinion that all counties participating in a

multicounty agreement sharing a county judge pursuant to N.D.C.C. section 27-07.1-02 must approve an agreement with a city pursuant to section 8 of Senate Bill 2040.

IV.

It is further my opinion that, absent an agreement to the contrary, the county's thirty-five percent share of fees, fines, costs, forfeitures, or other monetary consideration collected pursuant to section 11 of Senate Bill 2040 need not be shared among all counties who participate in a multicounty agreement under N.D.C.C. section 27-07.1-02 but such funds may be retained by the county in which the jury trial was conducted.

- ANALYSES -

Senate Bill 2040 sets forth two methods by which a municipal ordinance violation may be transferred to county court for trial.

Section 8 of Senate Bill 2040 authorizes a transfer of some or all municipal court cases to a county court by agreement. That section provides:

Transfer of municipal ordinance cases to county court. With the agreement of the governing body of the county, or the counties of the multicounty agreement area pursuant to section 27-07.1-02, the governing body of a city may, by ordinance, transfer some or all of the cases of the municipal court to the county court of the county in which the city is located. These cases are deemed county court cases for purposes of appeal.

Section 11 of Senate Bill 2040 requires the transfer of a municipal court case to the county court if a jury trial is not waived. This transfer is not dependent upon an agreement between the city and county, but, rather, the transfer occurs by operation of law. Section 11 provides:

Transfer to county court if jury trial not waived - Expenses of prosecution - Division of funds between city and county. If within fourteen days after arraignment a defendant has not waived in writing the defendant's right to a jury trial in a case where it otherwise exists, the matter must be transferred to the county court for trial. The city shall provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county or any individual or entity for prosecution or defense services. If the city and the county do not otherwise agree by resolutions of the respective governing bodies, the city is entitled to sixty-five percent and the county is entitled to thirty-five percent of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section. The share of fees, fines, costs, forfeitures, and any other monetary consideration due to the city must be paid to the city treasury at least once each quarter, while the share due to the county must be paid to the county general fund at least once each quarter. At the time of payment, the county court shall account under oath to the city

auditor for all money collected.

Section 8 of Senate Bill 2040 will permit a transfer by agreement of municipal court cases to the county court regardless of whether or not a jury trial has been waived. In other words, some or all of the municipal court functions may be transferred to a county court. Under this section, this transfer will occur only by agreement between the city and the governing body of a county or counties. The provisions of this agreement will set forth the rights and responsibilities of the contracting parties pertaining to the sharing of costs and payment of those costs. The sixty-five percent/thirty-five percent distribution as set forth in section 11 of Senate Bill 2040 will not be applicable to an agreement entered into pursuant to section 8. The specific percentages of fees, fines, costs, forfeitures, or any other monetary consideration collected from the transferred cases will be established in accordance with the agreement by the contracting parties.

II.

Section 11 of Senate Bill 2040 automatically transfers a municipal ordinance violation to a county court for trial absent a waiver of a jury trial by the defendant. Should there not be a waiver of jury trial, the county court will then assume jurisdiction of the initial trial of the municipal ordinance violator. The county court will not act as an appellate court conducting a trial de novo in accordance with the law as existing prior to the effective date of Senate Bill 2040.

Although the county court will be hearing a municipal ordinance violation, this case will be heard as a county court trial. The city must provide a prosecuting attorney and a defense attorney for an indigent defendant but the jury costs for the trial will be borne by the county. It is my understanding that this is the current practice with reference to jury trials being held as appeals from municipal ordinance convictions.

N.D.C.C. section 27-09.1-14 provides:

27-09.1-14. MILEAGE AND COMPENSATION OF JURORS. A juror shall be paid mileage at the rate provided for state employees in section 54-06-09. A juror shall be compensated at the rate of twenty-five dollars for each day of required attendance at sessions of the district or county court and ten dollars for each day of required attendance at sessions of a coroner's inquest. The mileage and compensation of jurors shall be paid by the state for jurors at sessions of the district court and paid by the county for jurors at sessions of the county court. Jurors at coroner's inquests shall be paid by the county.

Pursuant to this provision, mileage and compensation for jurors shall be paid by the county. Jurors hearing a municipal ordinance violation in county court will be county court jurors subject to the payment provisions of this section.

Although a county will be responsible for jury costs, a county may not be responsible for the jail costs incurred after a conviction of

a municipal ordinance violator. N.D.C.C. section 12-44.1-02 requires a city to either establish and maintain a jail at its own expense, contract for jail services with another county or city, or establish and maintain a regional correction center in conjunction with other counties and cities. In addition, N.D.C.C. section 40-05-01(41) permits a city to use a county jail with the consent of the Board of County Commissioners. That section provides:

1. Jails. To establish, maintain, and regulate a jail and, with the consent of the board of county commissioners, to use the county jail for the confinement of persons charged with or convicted of the violation of any ordinance.

A transfer of a municipal ordinance violation to a county court for trial pursuant to section 11 of Senate Bill 2040 will not change the underlying status of that action as a violation of a municipal ordinance. Absent the existence of a city jail, the city must either contract with another county or city or join in a regional correction center for the purpose of providing a facility for the incarceration of persons who have been adjudged guilty of that commission of a municipal offense, regardless of whether that adjudication occurred within the municipal court or in a county court after a transfer pursuant to section 11. The fact that the city must provide a prosecuting attorney and a defense attorney for an indigent defendant further supports the conclusion that the underlying proceeding continues to be for adjudication of a municipal ordinance violation even though the actual place of trial is within the county court.

III.

Section 8 of Senate Bill 2040, as set forth above, is clear that the city is authorized to transfer some or all of its municipal court cases to a county court "with the agreement of the governing body of the county, or the counties of the multicounty agreement area pursuant to section 27-07.1-02." This statutory provision does not authorize less than all of the counties who participate does not authorize less than all of the counties who participate in a multicounty agreement area for the sharing of county judge to contract with an individual city located within only one of the counties.

IV.

N.D.C.C. section 27-07.1-02 authorizes counties to enter into multicounty agreements to share the services of a judge or judges. Pursuant to this provision, each county will retain its own county court and each action shall be venued in the county court of any county in which venue is proper under other provisions of law or rules of the Supreme Court.

Venue of a municipal ordinance violation transferred pursuant to sections 8 or 11 of Senate Bill 2040 will be in the county court of the county in which the city is located. Although the multicounty agreement entered into pursuant to N.D.C.C. section 27-07.1-02 provides for the sharing of the salary and expenses of the judge or judges and any court reporters, other expenses of conducting a jury trial pursuant to the automatic transfer provision of section 11 of

Senate Bill 2040, other than the costs of a prosecuting attorney and an attorney for an indigent defendant, will fall upon the county court in which the jury trial is conducted. These expenses would include the mileage and compensation of jurors required by N.D.C.C. section 27-09.1-14.

The county may be able to pass all or a part of the expenses to a city if an agreement is entered into pursuant to section 8 of Senate Bill 2040 or if the city and the individual county agree, by resolution, to modify the percentage of fees, fines, costs, forfeitures, or any other monetary consideration collected which would otherwise be allotted to each entity pursuant to section 11 of Senate Bill 2040.

Section 11 of Senate Bill 2040 evidences a clear intent by the Legislature that a county is entitled to recoup at least some of the additional expense incurred as a result of being required to provide a jury trial in the first instance for a violation of a municipal ordinance. Section 11 does not require, as does section 8, an agreement by counties of a multicounty agreement are to change the percentage payment of moneys collected in the municipal case. Rather, section 11 is intended to be applicable to only the city and the county in which the jury trial is located. I can find no legislative intent that a collection of fees, fines, costs, forfeitures, or other monetary consideration be shared among all counties within a multicounty agreement area when only one of those counties has incurred the expense of the jury trial. If this sharing was permitted, a much greater financial burden would be placed upon the county which held the jury trial, especially if that county had within its borders a larger city which caused the trial of more than municipal ordinance violations than occurring in other counties within the multicounty agreement area.

- EFFECT -

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

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