STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 93-F-17

Date issued: October 22, 1993

Requested by: Representative John Mahoney

- QUESTIONS PRESENTED -

I.

Whether city and county agreements which transfer municipal court cases to the county court are binding upon the district courts after the county courts are eliminated.

II.

Whether noncriminal traffic offenses, presently heard in county courts and subject to appeal to district courts, are subject to appeal to district courts after county courts are eliminated.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that city and county agreements that transfer municipal court cases to the county court are not binding upon the district courts after court unification occurs.

II.

It is my further opinion that noncriminal traffic offenses heard in district court after court unification occurs are appealable to the district court.

- ANALYSES -

I.

General authority for cooperative agreements between political subdivisions of the state is provided by the North Dakota Constitution:

> Agreements, including those for cooperative or joint administration of any powers or functions, may be made by any political subdivision with any other political subdivision, with the state, or with the United States, unless otherwise provided by law or home rule charter. A political subdivision may by mutual agreement transfer to the county in which it is located any of its powers or functions as provided by law or home rule charter, and may in like manner revoke the transfer.

N.D. Const. art. VII, ? 10. The constitution also provides for legislative control over political subdivisions:

> The legislative assembly shall provide by law for the establishment and the government of all political subdivisions. Each political subdivision shall have and exercise such powers as provided by law.

N.D. Const. art. VII, ? 2.

Cities are municipal corporations and as such may only exercise the powers expressly conferred upon them by the Legislature, or such as may be necessarily implied from the powers expressly granted. Dakota Land Company v. City of Fargo, 224 N.W.2d 810, 813 (N.D. 1974). The Legislature has the authority to define the powers of cities and to prescribe the manner of their exercise by granting, withholding or withdrawing powers and privileges as it sees fit. State v. Gronna, 59 N.W.2d 514, 529 (N.D. 1953). Counties, too, are political subdivisions and "may speak and act only in the manner and on the matters prescribed by the Legislature in statutes enacted pursuant to constitutional authority." County of Stutsman v. State Historical Society, 371 N.W.2d 321, 329 (N.D. 1985). Further, "[a] political subdivision, as an agency of the state in the exercise of governmental powers, generally has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of the State." Id. at 330. Therefore, the Legislature has authority to control the means, requirements, and effect of cooperative agreements between cities and counties.

Under present law the governing body of a city, by ordinance,

may transfer some or all of the cases of a municipal court to the appropriate county court with the agreement of the governing body of the county, or of the counties of a multi-county agreement area established pursuant to N.D.C.C. ? 27-07.1-02. N.D.C.C. ? 40-18-06.2, note. However, the county courts will be abolished on January 1, 1995, following the completion of the terms of the county court judges. 1991 N.D. Sess. Laws ch. 326, ? 1(1). All case files, untried cases, or any other unfinished business of the county courts remaining at that time will be considered case files, untried cases, and unfinished business of the district court of the judicial district in which each respective county is located. 1991 N.D. Sess. Laws ch. 326, ? 1(4).

After court unification takes place N.D.C.C. ? 40-18-06.2 will read as follows:

> **40-18-06.2. Transfer of municipal ordinance cases to district court - Abolition of office of municipal judge.** With the agreement of the governing body of the county, the presiding judge of the judicial district in which the city is located, and the state court administrator, the governing body of a city may, by ordinance, transfer some or all of the cases of the municipal court to the district court serving the county in which the city is located. These cases are deemed district court cases for purposes of appeal. The governing body of a city with a population of less than five thousand, upon transferring all municipal court cases to the district court, may abolish, by resolution, the office of municipal judge. The term of office of the municipal judge elected to serve that city terminates upon the date the governing body of the city abolishes the office of municipal judge.

1991 N.D. Sess. Laws ch. 326, ? 157. The present version of Section 40-18-06.2, which provides for the transfer of municipal cases to county courts, is effective only through January 1, 1995. 1991 N.D. Sess. Laws ch. 326, ? 205.

The law which allows municipalities to transfer municipal court cases to county courts expires at the same time the county courts are abolished, specifically at the close of

business on January 1, 1995. Although the Legislature did provide that pending county cases will be completed as district court cases, the Legislature did not provide that preexisting agreements between municipalities and counties for the transfer of municipal cases to the county courts will apply to district courts following the abolition of the county court. In its amendment of section 40-18-06.2, the Legislature added to the requirement of the agreement of the governing body of the county the additional requirements of the approval of the presiding judge of the judicial district and the approval of the state court administrator. Unless the presiding judge of the relevant judicial district and the state court administrator have so agreed, there is no authority for the transfer of municipal court cases to the district court.

The legislative history regarding the 1991 amendment to N.D.C.C. ? 40-18-06.2 is sparse:

> **Rep. Ring:** Where are the Municipal Court Judges going to stand under this single system?
>
> **Bruce Levi:** There is no effect to the Municipal Courts. There are provisions now that provide transfer from Municipal to County Court. What the bill does is simply replace those references of County Cour [sic] to the District Court.

Hearing on H. 1516 and 1517 before the House Comm. on the Judiciary, 52nd N.D. Leg. (February 5, 1991). The legislative history also contains two reports by the North Dakota Consensus Council, Inc., which analyze the original bills which became 1991 N.D. Sess. Laws ch. 326. The first report is dated February 5, 1991, and the second report is dated March 5, 1991. They identically state:

> Section 18 would amend section 40-18-06.2, relating to municipal ordinance violation procedures. Presently, a county and city may agree to transfer some or all of the cases of the municipal court to the county court. With the elimination of references to the county court, this section would allow the city and the presiding judge of the judicial district in which the city is located, as well as the state court administrator,

> to agree to transfer municipal court cases to the district court serving the city, effective January 2, 1995.

The legislative history, albeit sparse, supports the conclusion that cities seeking to transfer municipal court cases to the district court will have to make an agreement with the presiding judge of the judicial district in which the city is located and the state court administrator, as well as the county governing board, after January 2, 1995.

For the foregoing reasons, it is my opinion that cities which seek to transfer municipal court duties and cases to the district court following court unification must enter a new agreement with their county governing board, the presiding judge of the appropriate judicial district, and the state court administrator.

II.

Currently, when a person chooses not to follow one of the simplified procedures set forth in N.D.C.C. ? 39-06.1-02 for the disposition of a noncriminal traffic offense, an initial hearing is typically held before the county or municipal court with an appeal available to the district or county court for trial anew. N.D.C.C. ? 39-06.1-03, note. After court unification takes place, the initial hearings formerly heard in the county court will be heard in the district court.

If the official conducting the hearing is not a person appointed by a district judge pursuant to N.D.C.C. ? 39-06.1-03(7), the situation is presented where the decision of a district judge will be appealed to the district court for trial anew:

> If a person is aggrieved by a finding that the person committed the violation, the person may, without payment of a filing fee, appeal that finding to the district court for trial anew. If, after trial in the appellate court, the person is again found to have committed the violation, there may be no further appeal. Notice of appeal under this subsection must be given within thirty days after a finding of commission of a violation is entered by the official. Oral notice of appeal may be given to

> the official at the time that the official adjudges that a violation has been committed. Otherwise, notice of appeal must be in writing and filed with the official, and a copy of the notice must be served upon the prosecuting attorney. An appeal taken under this subsection may not operate to stay the reporting requirement of subsection 4, nor to stay appropriate action by the licensing authority upon receipt of that report.

N.D.C.C. ? 39-06.1-03(5)(a).

It should be noted that there is no further appeal "after trial in the appellate court," which implies that there must be an appellate court even if the initial hearing was before a district judge. Furthermore, as part of the same legislation which modified N.D.C.C. ? 39-06.1-03(5)(a), the district court was substituted for the county court and provision was made in certain habeas corpus appeals for an appeal to the Supreme Court to be substituted for the appeal to the district court. 1991 N.D. Sess. Laws ch. 326, ? 61. Therefore, it may be concluded that the Legislature was aware of the fact that if the district court was substituted for the county court, any matters which were formally appealed from the county court to the district court could have been directed to be appealed to the Supreme Court. The provision in N.D.C.C. ? 39-06.1-03 as amended that the appeal is to the district court is clear and free of ambiguity; therefore, the language of the statute may not be disregarded. N.D.C.C. ? 1-02-05.

Thus, after January 2, 1995, it is possible for an initial traffic hearing to be heard by a district court judge and appealed to the district court. One possible approach to avoid the decision being appealed to the same judge would be for the district court to appoint a magistrate to act as the official in the initial hearing. N.D.C.C. ? 39-06.1-03(7). Effective January 2, 1995, the presiding judge of each judicial district may appoint any qualified person to serve as magistrate. N.D.C.C. ? 27-05-31; see also 1991 N.D. Sess. Laws ch. 326, ? 87. If all initial hearings were conducted by a judicially appointed magistrate or a municipal judge, then the situation of a decision by a district court judge being appealed to the district court would not occur. The Supreme Court is vested with the authority to promulgate rules of

procedure which also could address this situation. N.D. Const. art. VI, ? 3. See also City of Fargo v. Dawson, 466 N.W.2d 584 (N.D. 1991).

It is therefore my opinion that N.D.C.C. ? 39-06.1-03(5)(a), as amended effective January 2, 1995, requires an appeal for trial anew to the appropriate district court even if the initial hearing was conducted before a district court judge.

- EFFECT -

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

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