

LETTER OPINION
95-L-162

July 19, 1995

Mr. James D. Gion
Hettinger County State's Attorney
P.O. Box 101
Regent, ND 58650-0101

RE: Posting Requirements

Dear Mr. Gion:

Thank you for your letter regarding posting requirements.

Specifically you ask the following questions:

1. Does N.D.C.C. ? 20.1-01-17 require posting the interior boundaries of a quarter section of land in a section if all of the quarters in the section are posted along the section lines? and
2. Does N.D.C.C. ? 20.1-01-17 require posting the interior boundaries of a quarter section of land in a section where some, but not all of the quarters in the section are posted along the section lines?
3. Does the fence referred to in N.D.C.C. ? 20.1-01-17 have to meet the definitions of a legal fence as set out in N.D.C.C. ? 47-26-01? Does a fence have to completely surround the posted area in order to provide for posting at gates only on the sides fenced?

If the land is owned by more than one landowner, the answer to your first two questions is the same. Even in the case where all the quarters in the section are posted along the section lines, another landowner may give permission to a hunter to hunt the land which is adjacent to, but not owned by, the hypothetical quarter section landowner.

N.D.C.C. ? 20.1-01-17 states:

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Only the owner or tenant of any land may post it by placing signs alongside the public highway or the land giving notice that no hunting is permitted on the land. The name of the person posting the land must appear on each sign in legible characters. The signs must be readable from the outside of the land and must be placed conspicuously not more than eight hundred eighty yards (804.68 meters) apart. As to land entirely enclosed by a fence or other enclosure, posting of signs at or on all gates through the fence or enclosure constitutes a posting of all the enclosed land. No person may in any manner deface, take down, or destroy posting signs.

(Emphasis added.)

N.D.C.C. ? 20.1-01-17 requires that the posting signs must be "readable from the outside of the land." The outside of the land may exist on a section line or public highway or may abut another landowner's property within a section. In any event, the signs must be readable from the "outside of the land" and must not be more than 880 yards apart. Although some courts have taken into account the point at which a hunter enters the section, to be truly enforceable, the landowner should post the interior portion of the quarter section either along the interior boundary or at the interior corner to ensure that the signs are readable from the "outside of the land." Again, this is true even for land which is entirely posted by other owners on the outside of the section because other landowners may grant permission to hunt their land, and the placing of the signs on the interior boundaries will allow hunters to identify areas on which they do not have permission from other landowners.

If the section is owned by one landowner, proper posting on the exterior will be sufficient for all land within.

In response to your third question, N.D.C.C. ? 20.1-01-17 requires that land entirely enclosed by a fence or other enclosure must be posted on all gates. Hence, the fence must completely surround the posted area in order to provide for the gate-posting option. "Fence" is not defined within the

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statutes or rules relating to the Game and Fish Department.

Discussions with the Game and Fish Department indicate that the legal definition of fence found in N.D.C.C. ? 47-26-01 has not always been literally applied by courts enforcing the fence posting requirements. Key elements that are considered are that the fence completely surrounds the area and that the fence is kept in relatively good maintenance. If the fence is serviceable, then posting at all gates would meet the posting requirement of N.D.C.C. ? 20.1-01-17. However, if the fence is in ill-repair or just portions of it remain, the land must be posted in such a manner that signs are not more than 880 yards apart and are readable from the outside of the land.

If you have any further questions regarding this issue, please contact Assistant Attorney General Bill Delmore, who is assigned to the Game and Fish Department, at (701) 328-3640.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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