

OPINION
57-35

April 27, 1957 (OPINION)

CITIES

RE: Traffic Control

This is in reply to your letter requesting an opinion of this office in regard to vehicular regulations pertinent to the University of North Dakota.

You inform us that the city engineer of the City of Grand Forks advises you that the campus of the University of North Dakota is entirely within the city limits of the City of Grand Forks.

You ask the following questions:

1. "Does the City of Grand Forks have authority to pass traffic and other ordinances affecting parking limits and areas, speed, etc. on the campus?"
2. "Do the city police of Grand Forks have jurisdiction upon the campus of the University of North Dakota to enforce city ordinances by making arrests or issuing traffic tickets the same as they do in the city of Grand Forks other than on the University campus?"
3. "Is there any state law, rule or regulation by which the University has own traffic provisions with jurisdiction in any board or otherwise to enforce them separate and apart from the city ordinance, police department and police court of the City of Grand Forks?"

"A municipal corporation takes its powers from the statutes which give it life and has none which are not expressly or impliedly conferred thereby or essential to effectuate the purpose of its creation." *Lang v. Cavalier*, 59 N.D. 75, 228 N.W. 819 (quoted from *State v. Brekke*, 28 N.W. 2d. 598).

"In this state cities have only the following powers: (a) Those granted in express words. (b) Those necessarily implied or incident to the powers expressly granted. (c) Those essential to the declared objects and purposes of the corporation - not simply convenient but indispensable. *Stern v. Fargo*, 18 N.D. 289, 122 N.W. 403, 26 L.R.A. (N.S.) 665." (Quoted from *Fargo v. Glaser*, 62 N.D. 673. 681).

Cities and villages in North Dakota are municipal corporations and possess only such powers as are conferred on them by statute. Doubtful claims of power or doubt or ambiguity in the terms used by the Legislature are resolved against the corporation." *North Fargo v. Fargo*, 49 N.D. 597, 192 N.W. 977; *Weeks v. Hetland*, 52 N.D. 351, 202 N.W. 807." (Quoted from *Fargo v. Glaser*, 62 N.D. 673, 681).

In Section 40-0501 of the N.D.R.C. of 1943 as amended to date, we find express grants or authority to municipalities pertinent to this situation as follows:

"40-0501. The governing body of a municipality shall have the power:

"1. Ordinances. To enact or adopt all such ordinances, resolutions, and regulations, not repugnant to the constitution and laws of this state, as may be proper and necessary to carry into effect the powers granted to such municipality or as the general welfare of the municipality may require, and to repeal, alter, or amend the same. The governing body of a municipality may adopt by ordinance the conditions, provisions, and terms of a building code, a fire prevention code, a plumbing code, and electrical code, a sanitary code, vehicle traffic code, or any other standard code which contains rules and regulations printed as a code in book or pamphlet form by reference to such code or portions thereof alone without setting forth in said ordinance the conditions, provisions, limitations, and terms of such code. When any such code or portion thereof shall have been incorporated by reference into any ordinance as aforesaid, it shall have the same force and effect as though it had been spread at large in such ordinance without further or additional posting or publication thereof. A copy of such standard code or portion thereof shall be filed for use and examination by the public in the office of the city auditor or village clerks of such municipality prior to the adoption thereof. The adoption of any such standard code by reference shall be construed to incorporate such amendments thereto as may be made therein from time to time, and such copy of such standard code so filed shall at all times be kept current in the office of the city auditor or village clerk of such municipality. The adoption of any such code or codes heretofore by any municipality is hereby validated. Fines, penalties, and forfeitures for the violation thereof may be provided within the limits specified in this chapter notwithstanding that such offense may be punishable also as a public offense under the laws of this state."

"8. STREETS, SIDEWALKS AND PUBLIC GROUNDS. To lay out, establish, open, alter, repair, clean, widen, vacate, grade, pave, park, or otherwise improve and regulate the use of streets, alleys, construct, maintain and operate parking lots and facilities for motor vehicles: to regulate or prevent any practice having a tendency to annoy persons frequenting the same; and to prevent and regulate obstructions and encroachments upon the same."

"17. To regulate traffic and sales upon the streets, sidewalks and public places."

"18. To regulate the speed of vehicles and locomotives within the limits of the corporation."

In section 40-0502 of the N.D.R.C. of 1943, we find additional

authority granted to cities pertinent to this situation as follows:

"40-0502. The city council in a city operating under the council form of government and the board of city commissioners in a city operating under the commission system of government, in addition to the powers possessed by all municipalities, shall have power:

"14. TRAFFIC REGULATION. To regulate, control or restrict within designated zones or congested traffic districts, the use of streets, alleys, or other public ways by various classes of traffic, except that any municipal regulations shall be ineffective as to common carriers licensed by this state under a certificate of public convenience and necessity until such regulations are approved by the public service commission."

The supreme court of this state in *State v. Brekke*, 28 N.W. 2d. 598, held in effect that the above statutes (prior to amendments made subsequent to August 6, 1947, the date of that decision) do give the municipalities of this state power to regulate the use of their streets, to the extent of prescribing parking regulations (in this instance in regard to the installation of parking meter). It seems doubtful to us, however, that the ways of travel upon the campus of the University of North Dakota can properly be considered streets of the City of Grand Forks. We find no specific statutory definition of the terms "streets" in regard to the use thereof in the above quoted statutes. We do note the definition of "highway or roadway" in subsection 23 of section 39-0101 of the N.D.R.C. of 1943, expressly excluding roadways or driveways upon grounds owned by private persons, colleges, universities, or other institutions, the present amendment to same eliminating this exclusion, and the language of the supreme court of this state in *Fargo v. Glaser* (supra) at page 680, indicative of the application of these statutes to "every street and alley in every city in the state." We find no decision of the supreme court of this state directly on the point of whether such a way would or would not be a public street within the meaning of the above statutes. We note, however, the decision of *Bolster v. Ithaca St. Ry. Co.* 79 App. Div. 239, 79 N.Y.S. 597, to the effect that a way located upon the campus of a university on ground controlled by the university is not a public street.

Custody and control of the grounds and properties of the University is generally vested in the Board of Higher Education (Article 54, N.D. Constitution, and chapter 15-10 N.D.R.C 1943) with some authority granted to the faculties of the institutions themselves. Chapter 15-11 N.D.R.C. 1943. There is nothing specific in the provisions of either statute or constitution as to regulation of traffic upon such grounds. From the information at hand, we would assume that the ways in question were established, built, etc. by the authority of the State of North Dakota acting through the Board of Higher Education (or prior to the adoption of Article 54 N.D. Constitution the Board of Administration) for the convenience of the uses for which the University was established and is maintained, and for the convenience of the public. Such ways have apparently been used by the public as a whole with the consent and invitation of the state acting through the Board and faculty since the establishment of same. In view of this situation, it is our opinion that the ways for

vehicular travel upon the campus of the University of North, while technically nor public streets of the city of Grand Forks from all practical aspects appear to the public and are quite generally used by the public in the same manner as the public ways of the municipality.

Under the terms of the above quoted section 40-0501 subsection 18, we believe it quite clear that the legislative assembly intended to give the governing bodies of its municipalities authority to regulate the speed of vehicles and locomotives within its corporate limits apparently without regard to the ownership, custody or control of the street, road, way, or grounds upon which such vehicle or locomotive is being operated.

In view of the use of the ways upon the campus of the University in the same manner as a public street, by the general public, it would be difficult to hold that such ways were not intended to be governed by the general grant of powers to control traffic for the protection of the public safety by the above quoted statutes. It would appear that there is ample authority for the proposition that general "rules of the road", dependent, of course, upon the terms of such "rules" enacted by governing bodies within their police powers for the safety of the general public are applicable to private ways, and ways of this type: See *Crossler v. Safeway Stores, Inc.* (Idaho) 6 P2d. 151, 80 A.L.R. 463, See also Anno. 80 A.L.R. 469 and cases there cited, and 40 C.J.S. 256 Highways, section 236, subsection b and cases there cited. It is, therefore, our opinion that the city of Grand Forks would have authority to enact ordinances governing safe driving, in the nature of our statutory rules of the road, (to the extent same would not be conflicting with the statutory rules of the road) applicable to the ways and drives upon the campus of the University of North Dakota.

We find no authority directly on the proposition that a municipal body would have authority to regulate parking upon ways, drives or grounds other than municipal streets, ways or grounds, and it does seem doubtful that the reasoning of *State v. Brekke*, supra, would necessarily be applicable to this type of situation. However, the right of the public to use such ways or drives is under the reasoning of *Bolster v. Ithaca St. Ry. Co.* (supra) and *Crossler v. Safeway Stores, Inc.* (supra) dependent upon the invitation of the authority having control of grounds of such institution. Assuming that such invitation to the general public is modified, as to time of remaining in any one place, and the public is given notice of same by proper signs, etc., we know of no reason why the authority of the municipality might not be used to protect the campus of the University of North Dakota, and more specifically, the ways and drives thereof from trespassers thereon, in the same manner as the same might be invoked for the protection of private property generally.

It is further our opinion that there is in most instances no conflict between the jurisdiction of the board of higher education and the University of North Dakota faculty over the grounds of the University and the jurisdiction of the City of Grand Forks over its municipal limits, in so far as the jurisdiction of the board and faculty is for the purpose of maintaining and controlling the University as an

educational institution, and in so far as the jurisdiction of the city police of the city of Grand Forks to which you have reference would be only for the purpose of enforcing ordinances within the police power of the city of Grand Forks for the protection of the general of the general public. To the extent there purposes did not conflict, it is our opinion that your second question must be answered in the affirmative.

The hereinbefore cited, Article 54 North Dakota Constitution, chapter 15-10 and chapter 15-11 N.D.R.C. 1943, are the only state laws, rules or regulations by which the University could enact or enforce its own traffic provision or enforce same separately or apart from the city ordinances, police department and police court of the city of Grand Forks. In so far as there is not statutory authority making violation of traffic regulations of the Board of faculty crimes or misdemeanors, it is our thought that traffic regulations of such board or faculty would be relatively ineffective.

LESLIE R. BURGUM

Attorney General