

OPINION
61-42

September 25, 1961 (OPINION)

CIVIL DEFENSE

RE: Alerts - Duty of City Governing Body

Subject: Civil Defense Alerts

In your letters you note the provisions of chapter 37-17 of the North Dakota Century Code and the fact that this chapter authorizes cities to establish local organizations for civil defense. You state, based on the information you have at hand, it is your opinion that in the case of state civil defense alerts the responsibility and authority for controlling and managing the affairs of the City of Fargo rests exclusively in the hands of the Board of City Commissioners and the various department heads the same as under normal and ordinary circumstances.

As you know, chapter 37-17 of the North Dakota Century Code was amended by chapter 248 of the 1961 Session Laws. In section 1 of this chapter part of the policy and purpose of the Civil Defense Act is set forth:

". . .It is further declared to be the purpose of this Act and the policy of the state that all civil defense functions of this state be coordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies, of other states and localities, and of private agencies of every type, to the end that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster that may occur."

Section 3 of the Act (37-17-03, 1961 Supplement to the North Dakota Century Code) provides for the Director of Civil Defense, and he has the duty of coordinating the activities of all organizations for civil defense within the state. Section 8 (37-17-08, 1961 Supplement to the North Dakota Century Code) provides for local organizations for the civil defense and authorized and directs each political subdivision of the state to establish a local organization for civil defense in accordance with the state civil defense plan and program. Each local organization is to have a director to be appointed by the executive officer or governing body. Such director has direct responsibility for the organization, administration and operation of the local organization subject to the direction and control of the executive officer or governing body.

We also note the provisions of section 13 (37-17-13, 1961 Supplement to the North Dakota Century Code) of the Civil Defense Act which provide that the Governor and the executive officers or governing bodies of the political subdivisions of the state are to utilize the services, equipment, supplies and facilities of existing department offices, and agencies of the state and of the political subdivisions

to the maximum extent practicable and the officers and personnel of all department, offices, and agencies are required and directed to cooperate with and extend such services and facilities to the Governor and to the civil defense organization of the state upon request.

Section 5, subsection 2 of the Act (37-17-05, 1961 Supplement to the North Dakota Century Code) confers upon the Governor the power to prepare a comprehensive plan and program for civil defense of North Dakota. He is also empowered to coordinate the preparation of plans and programs for civil defense by the political subdivisions of this state with the civil defense plan and program of this state to the fullest possible extent.

It appears, under the provisions of chapter 37-17 of the North Dakota Century Code as amended by chapter 248 of the 1961 Session Laws, that the basic responsibility and authority for controlling and managing the affairs of a city would rest with the governing body of such city. However, we also note that the whole philosophy of Civil Defense Act is one of cooperation between the civil defense organizations of the political subdivisions, State Civil Defense Director and the federal agencies. In this respect we would conclude that while the basic responsibility and authority for controlling and managing the affairs of a city rests with the governing body of that city, the provisions of chapter 37-17 of the North Dakota Century Code as amended by chapter 248 of the 1961 Session Laws would appear to be in the form of a mandate to the governing body of a city to cooperate with other civil defense agencies. In this respect we would not say the governing body of a city in times of a civil defense alert. Part of such responsibility rests with the Director of Civil Defense and cooperation between the city and the State Director is the keynote of the civil defense program.

It should also be noted that under section 6 of the Act (37-17-06, 1961 Supplement to the North Dakota Century Code) the Governor is given certain emergency powers during a state of emergency as declared under the provisions of this section. Such emergency powers would supersede other conflicting provisions of the Civil Defense Act in times of such emergency.

We would suggest that the office of the State Director of Civil Defense be contacted with regard to the functions and obligations of a local civil defense organization and that ever effort possible be made to assure the utmost cooperation between that office and the local civil defense organization.

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