

N.D.A.G. Letter to Brindle (Sep. 25, 1987)

September 25, 1987

Mr. John P. Brindle
Renville County State's Attorney's Office
205 Main Street E
P.O. Box 398
Mohall, ND 58761

Dear Mr. Brindle:

Thank you for your letter of August 27, 1987, requesting an Attorney General's opinion on the issue of designation of smoking areas within a county courthouse.

The portions of N.D.C.C. ch. 23-12 which apply directly to your question include N.D.C.C. §§ 23-12-09(1)(b), 23-12-10, and 23-12-10.1 which state as follows:

23-12-09. Smoking in places of public assembly -- Definitions. In sections 23-12-09 through 23-12-11, unless the context or subject matter otherwise requires:

1. "Place of public assembly" means:

. . . .

- b. Any building or other enclosed structure owned or leased by the state, its agencies, or political subdivisions, and all public education buildings.

23-12-10. Designation of smoking areas. Every place of public assembly is an area where smoking is not permitted outside of designated smoking areas. Smoking areas must be designated by the proprietor or other person with general supervisory responsibility over the place of public assembly, except in a place in which smoking is prohibited by the state fire marshal, by other governing law, rule, or ordinance, or by corporate or private policy. A sign must be posted in any designated smoking area which states "Designated Smoking Area" or words to that effect.

Except as otherwise provided, designated smoking areas in a place of public assembly may not occupy more than fifty percent of the total area available to the public and must be situated to minimize smoke drift. The proprietor of a food establishment with the seating capacity for fifty or more persons may temporarily, during the course of daily business, expand the designated smoking area beyond fifty percent of the total available area if

the smoking area becomes fully occupied and the additional space needed for the expansion is vacant or available.

23-12-10.1. Responsibility of proprietors. The proprietor or other person with general supervisory responsibility over a place of public assembly shall post an appropriate sign in any designated smoking area.

It is clear that N.D.C.C. ch. 23-12 applies to county courthouses and the requirement for designation of smoking areas rests with the entity which has general supervisory responsibility over the place of public assembly.

N.D.C.C. §§ 11-11-11(2) and 11-11-14(2) state as follows:

11-11-11. General duties of board of county commissioners. The board of county commissioners:

2. Shall supervise the conduct of the respective county officers.

11-11-14. Powers of board of county commissioners. The board of county commissioners shall have the following powers:

2. To make all order respecting property of the county.

Thus, the board of county commissioners has general supervisory responsibility over the county courthouse which is included in the property of the county. However, contact with the North Dakota State Department of Health and Consolidated Laboratories, the agency entrusted with enforcement of N.D.C.C. ch. 23-12, indicates that coordination between the board of county commissioners and each of the elected officers has provided the most workable designation of smoking areas within public buildings. We recommend that your county commissioners ask each of the elected officers within the building to provide a plan of designated smoking areas within their office. The commission can then review the individual plans and make adjustments to provide for an overall designation for the courthouse. If a difference of opinion still exists, the board of county commissioners has the authority to make a final decision regarding smoking areas.

Should you have any further questions regarding implementation of the plan, please contact Bill Delmore, assistant attorney general, assigned to the State Department of Health and Consolidated Laboratories at 224-3234.

Sincerely,

Nicholas J. Spaeth

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