

N.D.A.G. Letter to Plesuk (Dec. 2, 1992)

December 2, 1992

Mayor Ronald Plesuk
P.O. Box 125
Butte, ND 58723

Dear Mayor Plesuk:

Thank you for your November 5, 1992, letter requesting an opinion regarding whether a city may assess against property the costs of garbage collection and grass cutting.

First, you ask whether a city may assess against the premises by adding to the property taxes delinquent bills for garbage collection services. Cities have only those powers expressly conferred upon them by the Legislature, or those necessarily implied from the powers expressly granted. See Parker Hotel Co. v. City of Grand Forks, 177 N.W.2d 764, 768 (N.D. 1970). In regard to sewage and garbage disposal, North Dakota law states, "[i]f the established service charge is not paid when due, such sum may be recovered by the municipality . . . in an action at law, or such sum may be assessed against the premises served and collected and returned in the same manner as other county and municipal taxes are assessed, certified, collected, and returned." N.D.C.C. § 40-34-05. See also N.D.C.C. § 40-05-01.1. Thus, it is clear that a city may assess against the premises by adding to the property taxes delinquent bills for garbage collection services.

Second, you ask whether a city may cut the grass on an absentee lot owner's lot and assess the costs to the premises by adding the costs to the property taxes. If noxious weeds are growing on the lot and the city has a population of 3,000 or more, the city may proceed to control such weeds pursuant to N.D.C.C. § 63-01.1-10.1. The only other statute that may apply is the following:

40-05-01.1. Assessment of costs of work done necessary for the general welfare. Whenever it becomes necessary for the general welfare, public health, fire protection, or public safety to order an owner or occupant of property to do certain work provided for by ordinance, and such owner or occupant refuses to conduct or comply with such order, the work may be done by the municipality and the owner or occupant of such property billed for the same by the municipality, or whenever a municipality for the general welfare, public health, fire protection, or public safety establishes by ordinance and maintains and operates a garbage and rubbish collection and removal system, the cost of such service may be charged to the owner or occupant of the property served. If such bill is not paid when due, the amount thereof may be assessed against the premises on which such work is done, or for which the service is rendered, and collected and returned in the same manner as other municipal taxes are assessed, certified, collected,

and returned. This section shall not be construed to limit or affect in any manner any methods which now or in the future may be used for the collection of costs incurred by the municipality for the purposes set forth in this section, but the remedies provided for herein shall be in addition to such methods.

Thus, if a city properly determines that cutting the grass on the absentee lot owner's lot is "necessary for the general welfare, public health, fire protection, or public safety," it may proceed under N.D.C.C. § 40-05-01.1. This section enables the amount of an unpaid bill to be assessed against the premises on which such work is done. Such assessment may properly be made by adding the amount assessed to the property taxes for that lot.

Sincerely,

Nicholas J. Spaeth

las/krb