

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 93-F-09

Date issued: June 28, 1993

Requested by: Wayne O. Solberg, Fargo City Attorney

- QUESTION PRESENTED -

Whether a municipal court is a "court of competent jurisdiction" authorized to issue a disorderly conduct restraining order pursuant to House Bill 1238.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a municipal court is not a "court of competent jurisdiction" authorized to issue a disorderly conduct restraining order pursuant to House Bill 1238.

- ANALYSIS -

House Bill 1238, as adopted by the 1993 Legislative Assembly, established a new chapter to North Dakota Century Code (N.D.C.C.) tit. 12.1 authorizing the issuance of a disorderly conduct restraining order and establishing penalties for violation of that order.

Subdivision 2 of Section 2 of House Bill 1238 provides:

2. A person who is a victim of disorderly conduct or the parent or guardian of a minor who is a victim of disorderly conduct may seek a disorderly conduct restraining order from any court of competent jurisdiction in the manner provided in this section.

House Bill 1238 does not define the term "court of competent jurisdiction." Although N.D.C.C. ? 12.1-01-04(5) defines the term "court" as including a municipal court, that section does not define the term "court of competent jurisdiction."

Words used in a statute are to be understood in their ordinary sense, but technical words and phrases and words which have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning

or definition. N.D.C.C. ?? 1-02-02 and 1-02-03.

The term "court of competent jurisdiction" has a long-standing meaning in the law. A "court of competent jurisdiction" is one provided for in the constitution or created by the Legislature and having jurisdiction of the subject matter and the person. In re. Norton, 64 Kan. 842, 68 P. 639 (1902). A "court of competent jurisdiction" is one recognized by law as possessing the right to adjudicate a controversy. Harker v. City of Holyoke, 390 Mass. 555, 457 N.E.2d 1115 (1983).

Cities are creatures of statute and possess only those powers and authorities granted by statute or necessarily implied from an express statutory grant. Ebach v. City of Minot, 469 N.W.2d 801 (N.D. 1991). A rule of strict construction will apply in defining municipal powers. Id. However, the manner and means of exercising those powers, unless prescribed by the Legislature, are within the discretion of the city.

Municipal courts are courts of limited jurisdiction created by law. N.D.C.C. ? 40-05.1-06(5) authorizes a home rule city to provide for city courts and their jurisdiction and powers over ordinance violations. N.D.C.C. ? 40-14-01 authorizes a city under the council form of government to have an elected municipal judge. N.D.C.C. ? 40-15-01 grants the same authorization to cities with a commission form of government.

N.D.C.C. ch. 40-18 sets forth the general duties and requirements of a municipal judge. N.D.C.C. ? 40-18-01 grants the municipal judge exclusive jurisdiction to hear, try, and determine all offenses against the ordinances of a city.

A review of N.D.C.C. chs. 40-05 and 40-05.1 fails to disclose specific powers granted to a municipality to authorize by ordinance, or a municipal court to issue, a disorderly conduct restraining order established in House Bill 1238. Since House Bill 1238 does not specifically vest a municipal court with jurisdiction to issue a disorderly conduct restraining order, it is necessary to seek a grant of jurisdiction to a municipal court to hear and determine this type of action in other statutes.

My review of applicable North Dakota state law fails to disclose jurisdictional authority of a municipal court to issue a disorderly conduct restraining order pursuant to the

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procedures established in House Bill 1238.

N.D.C.C. ? 29-01-15(4) authorizes a municipal judge to grant a temporary protection order under the particular circumstances and for the limited duration set forth in N.D.C.C. ? 14-07.1-08. House Bill 1238 did not amend N.D.C.C. ? 29-01-15 to encompass disorderly conduct restraining orders issued pursuant to that act.

N.D.C.C. ? 14-07.1-02 authorizes a district court or a county court to issue a domestic violence protection order. However, N.D.C.C. ? 14-07.1-08 authorizes, in limited circumstances, a magistrate, which includes a municipal judge, to issue a domestic violence protection order if a district judge and county judge are unavailable and if it is deemed necessary to protect the applicant or others from domestic violence. This order will be of limited duration and may be continued by the magistrate only upon unavailability of a district and county judge.

Although the North Dakota Legislature has granted jurisdiction to a municipal judge to issue domestic violence protection orders upon the unavailability of a district judge and county judge and for a limited duration, this authority has not been extended to disorderly conduct restraining orders established by House Bill 1238. Since the Legislative Assembly has not granted the municipal court jurisdictional authority over the subject matter of a disorderly conduct restraining order, a municipal court will not be a "court of competent jurisdiction" as that term is used in House Bill 1238 and, therefore, does not possess the authority to issue the orders envisioned by that act.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ? 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Heidi Heitkamp
Attorney General

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Assisted by: Robert P. Bennett, Assistant Attorney General
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