

**LETTER OPINION
2002-L-24**

April 24, 2002

Mr. Jeffrey K. Leadbetter
Gwinner City Attorney
PO Box 511
Lisbon, ND 58054-0511

Dear Mr. Leadbetter:

Thank you for your letter asking whether a city that annexes land becomes the sole local government responsible for zoning in the annexed territory. Your question relates to the Big Dipper Landfill in Whitestone Hill Township in Sargent County.

A landfill not located in city limits is required to meet the zoning requirements of both the county and township. N.D.C.C. § 11-33-20. Whitestone Hill Township and Sargent County each have zoning ordinances. The city of Gwinner, however, is contemplating annexing the Big Dipper Landfill property into its city limits and intends to amend its zoning ordinance to regulate landfills. Thus, if the annexation is completed, the question is, which political subdivision's zoning law will govern the landfill.

County zoning law does not apply to property within a city's zoning authority. N.D.C.C. § 11-33-20. Township zoning is also inapplicable to land within cities. N.D.C.C. § 58-01-02. It is possible that a regional zoning commission could govern the landfill, N.D.C.C. § 11-35-01, but one does not exist in this area and until it does, land within cities is governed by city zoning laws. N.D.C.C. § 11-35-02.

Cities have zoning authority under N.D.C.C. ch. 40-47. This authority is not limited to city limits, because cities may also exercise extraterritorial zoning powers. N.D.C.C. § 40-47-01.1. This statute has been interpreted broadly. It enables a city to "exercise exclusive zoning control over all territory" within the extraterritorial area, despite the fact that the extraterritorial area is situated within another political subdivision with its own zoning regulations. Apple Creek Township v. City of Bismarck, 271 N.W.2d 583, 585, 587 (N.D. 1978). Based on the above statutes and the Supreme Court's holding in Apple Creek Township, a city's zoning authority preempts county or township zoning within the city's jurisdiction.

While Gwinner would have exclusive zoning authority over the landfill, be advised that there may be concerns regarding the city's proposed annexation. Chapter 40-51.2, N.D.C.C., governs the annexation of territory by municipalities, and limits annexations to contiguous or adjacent territory. Because the landfill is not currently contiguous to the city limits, I understand that the city is proposing to annex a strip of land connecting the city to the landfill. This type of annexation is commonly referred to as a "strip," "shoestring," or "long lasso" annexation. While the North Dakota Supreme Court has not specifically addressed the issue, courts from other states are divided on the validity of strip annexations, with the majority of courts holding strip annexations invalid. State ex rel. Dept. of Transportation v. City of Milford, 576 A.2d 618, 621 (Del. Ch. 1989) citing Annot., Municipal Corporations - Annexation, 49 A.L.R.3d 589, 613 (1973). See also, Griffin v. City of Robards, 990 S.W.2d 634, 640 (Ky. 1999); Earhardt v. City of Bristol, 970 S.W.2d 948, 953 (Tenn. 1998). But see, City of Claremore v. Town of Verdigris, 2001 W.L. 1263501 (Okla 2001) (approving the "strip" method of annexation). Thus, I caution you to carefully consider the validity of the proposed annexation.

Sincerely,

Wayne Stenehjem
Attorney General

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