

LETTER OPINION
97-L-159

September 26, 1997

Mr. Larry Quast
Mercer County State's Attorney
P.O. Box 39
Stanton, ND 58571

Dear Mr. Quast:

Thank you for your letter concerning police jurisdiction of the city of Zap. Your letter states the city of Zap has entered into an agreement with the Army Corps of Engineers making the city of Zap responsible for the park and recreational area known as Beaver Bay Recreational Area, located on Lake Sakakawea. Your letter further states that Beaver Bay Recreational Area is located approximately 15 to 20 miles north of Zap. Based upon your correspondence, it is my understanding the Army Corps of Engineers leases Beaver Bay Recreational Area to the Zap Park Board. The Zap Park Board is a park district created pursuant to N.D.C.C. ch. 40-49. Chapter XIX, Art. 1, § 19.0101 of the Revised Ordinances of the City of Zap, Mercer County, North Dakota of 1986. You ask whether the city of Zap has jurisdiction and authority to enforce city ordinances at the Beaver Bay Recreational Area.

As a matter of general rule, municipalities of the state of North Dakota have only such authority as the Legislature chooses to grant. N.D.C.C. §§ 40-06-01(2) and 40-20-05(1) establish the extent of municipal police jurisdiction. Through those sections the Legislature has clearly limited the jurisdiction of city police officers to certain geographical areas in and around the physical limits of the municipality.

This office has consistently held that a police officer employed by a city enjoys peace officer authority to enforce state law for a distance of up to one and one-half miles in all directions outside of the city limits of such city. This office has also consistently held that city police officers have jurisdiction to enforce municipal ordinances only within one-half mile outside of the city limits. See Letter from Attorney General Nicholas J. Spaeth to Kidder County State's Attorney Jerry Renner

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(Feb. 3, 1989); Letter from Attorney General Robert O. Wefald to Dickinson City Attorney Vince H. Ficek (April 20, 1983); Letter from Attorney General Allen I. Olson to Glen Ullin City Attorney Mike L. Halpern (Dec. 7, 1977); Letter from Attorney General Allen I. Olson to Harvey City Attorney Aloys Wartner, III (April 15, 1977); Letter from Attorney General Helgi Johanneson to Bismarck City Attorney John A. Zuger (July 13, 1966).

The jurisdictional limits of city police officers imposed by N.D.C.C. §§ 40-06-01(2) and 40-20-05(1) may not be extended by city ordinance or through a contract purporting to authorize additional jurisdiction. See Letter from Attorney General Allen I. Olson to Glen Ullin City Attorney Mike L. Halpern (Dec. 7, 1977); Letter from Attorney General Helgi Johanneson to Bismarck City Attorney John A. Zuger (July 13, 1966). Thus, the response to your question depends upon whether Beaver Bay Recreational Area is part of the Zap city limits or within one-half mile of the city limits.

Your letter indicates the Army Corps of Engineers leases Beaver Bay Recreational Area to the Zap Park Board. N.D.C.C. § 40-49-12(1) provides that park districts may "[a]cquire by purchase, gift, devise, condemnation, or otherwise, land anywhere within this state, or outside this state if located adjacent to a boundary of this state and of the park district, for parks, boulevards, and ways." This provision grants park districts the authority to assert jurisdiction over non-contiguous land, so long as that land is within the state of North Dakota. Letter from Attorney General Nicholas J. Spaeth to Gary D. Ramsey (July 16, 1991).

The Beaver Bay Recreational Area is within the state of North Dakota; therefore, the Zap Park Board may assert jurisdiction if the land is acquired by "purchase, gift, devise, condemnation, or otherwise" N.D.C.C. § 40-49-12(1). This office has previously determined that a lease constitutes an acquisition of land for purposes of N.D.C.C. § 40-49-12(1). Letter from Attorney General Nicholas J. Spaeth to Gary D. Ramsey (July 16, 1991); Letter from Gerald W. Vandewalle, Assistant Attorney General, to Daniel R. Twichell (May 3, 1966).

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N.D.C.C. § 40-49-12(1) further provides that all parks acquired by the Board "shall be considered for purposes of taxation and for all other purposes as being within the territorial limits of the municipality." Because Beaver Bay Recreational Area is acquired by the Zap Park Board, it is considered as being within the territorial limits of the city of Zap. See Letter from Attorney General Nicholas J. Spaeth to Gary D. Ramsey (July 16, 1991) (finding a municipal judge has jurisdiction to hear and try cases arising from park district ordinance violations committed outside the city limits on a reservoir leased by the park district). Municipal ordinances are enforceable upon the park district property unless the park district has adopted an ordinance on the subject or exercised exclusive jurisdiction. 1990 N.D. Op. Att'y Gen. 110.

Because Beaver Bay Recreational Area is considered within the territorial limits of Zap, it is my opinion Zap city police officers have authority to enforce city ordinances at and within one-half mile of Beaver Bay Recreational Area. It is my further opinion Zap city police officers also have authority to enforce state law at and within one and one-half miles of Beaver Bay Recreational Area.

N.D.C.C. § 40-49-01, referenced in your letter, is not applicable to the issue presented. N.D.C.C. § 40-49-01 grants a municipality authority to receive property within five miles of its corporate limits for use as a park or public grounds. In the present case it is the Zap Park District, not the city of Zap, acquiring the land. A park district is a political subdivision independent of a municipality. 1990 N.D. Op. Att'y Gen. 110.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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