



STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

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REPLY TO:
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April 7, 2010

Dr. Lee Mandell
Chairman, North Carolina Geographic
Information Coordinating Council
20322 Mail Service Center
Raleigh, N.C. 27699-0322

Re: Advisory Letter in Response to Request for Opinion as to the applicability of
N.C.G.S. § 89C-1, *et seq.* to Geographic Information Systems.

Dear Dr. Mandell:

This letter will respond to your 20 January 2010 letter to Chief Deputy Attorney General Grayson Kelley regarding Geographic Data Collection by Local Governments.

In your letter, you request an advisory opinion on the following questions:

1. Is a municipality permitted to collect GIS data?
2. Is a municipality permitted to collect GIS data outside of its municipal limit?
3. Is a municipality permitted to collect GIS data in that city's Extra Territorial Jurisdiction (ETJ) area?
4. Is a municipality permitted to collect GIS data for a county outside the boundary of the municipality?
5. If a municipality is permitted to collect GIS data outside of its municipal limit, is it permitted to collect GIS data for another municipality?
6. Is a county permitted to collect GIS data for another county?
7. Is a county permitted to collect GIS data within a municipality?

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Our opinion is that so long as the data is collected by an employee of the State of North Carolina, any political subdivision of the State or a municipality while engaged in that activity in the course of their employment, pursuant to N.C.G.S. § 89C-25(7), such collection of GIS data in each of the seven instances you specify is permissible.

As you observe in your letter, N.C.G.S. § 89C-3(7) defines the practice of land surveying to include creating, preparing or modifying electronic or computerized data, including GIS systems, relative to the performance of the practice of land surveying. While this section could be interpreted to define GIS data collection as the practice of land surveying only when that data collection is done as part of an independent act of land surveying, the remainder of the definition would appear broad enough to include many if not most of the activity associated with GIS data collection and management. That would appear to be the position of the North Carolina Board of Examiners for Engineers and Surveyors in Administrative Rule 21N.C.A.C. 56.1608 which requires that many GIS related activities be performed by a licensed land surveyor unless exempt by N.C.G.S. § 89C-25. Therefore, this opinion presumes, but does not opine, that the collection of GIS data would fall within the definition of the practice of land surveying, unless otherwise limited by Chapter 89C.

As you further observe in your letter, the provisions of Chapter 89C are in fact limited by N.C.G.S. § 89C-25. The limitation established by the third clause of N.C.G.S. § 89C-25(7) would in turn appear most applicable to the collection of GIS data by county of municipal employees and provides that Chapter 89C shall not be construed to prevent or affect

“[I]nspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision of the State, or any municipality including construction, installation, servicing, maintenance by regular full-time employees of street, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants...”

We believe that this clause is unambiguous and clearly removes county and municipal employees collecting of GIS data from the purview of the licensing requirements of N.C.G.S. § 89C-23 while engaged in that activity in the course of their employment. No court has reviewed this section, however, to determine whether the collection of GIS data by county or municipal employees constitutes the practice of land surveying such that those employees must be licensed land surveyors pursuant of N.C.G.S. § 89C-23. As such, the issue is subject to judicial interpretation which would supercede any opinion expressed herein. Were the issue to be litigated, an argument could be made that because of the specific listing of only public health and safety systems, this clause is intended to apply only to the physical facilities of State and local government, not their electronic data bases. Under the statutory construction principle *noscitur a sociis* (“a word is known by the company it keeps” *Wong v. Dulles*, 236 F.2d. 622), the limitation for maintenance and service work could be argued to apply only to work performed on physical facilities.

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The plain text of the section, however, does not contain such a limitation and we believe it would be error for a reviewing court to create a distinction between physical and electronic infrastructure that is not present in the statute. Moreover, Session Law 2009-451, which established the North Carolina Geographic Information Coordinating Council, contains a finding by the General Assembly that

“[T]here is a critical need for consolidating the investments made in geographic information systems and developing common infrastructure in order for the State to reap all the potential benefits of geographic information systems at the lowest cost.”

This finding is a strong indication that the General Assembly does not recognize and did not intend to create a distinction between the electronic infrastructure of the State, such as GIS databases, and physical infrastructure such as roads and the computers on which GIS databases are stored. For these reasons, in our opinion, the gathering of GIS data by State or local employees while engaged in that activity in the course of their employment does not constitute an unlawful practice of land surveying as proscribed by N.C.G.S. § 89C-23.

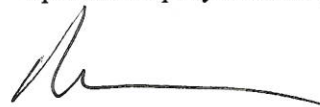
To resolve questions of whether employees so engaged may collect data outside the municipality, county or jurisdiction in which they are employed, we again turn to the plain text of the statute. The relevant portion of N.C.G.S. § 89C-25(7) contains no territorial or jurisdictional limit on the ability of otherwise exempt public employees to gather GIS data. We again believe it would be error to create a territorial restriction when one clearly does not exist in the text of the statute. If the collecting or gathering of GIS data by State or local employees while engaged in that activity in the course of their employment, we do not believe they are limited to the jurisdictional boundaries of their employer.

We hope you find this letter helpful in answering your questions. Please note that this is an advisory letter. It has not been reviewed and approved in accordance with procedures for issuing an Attorney General’s opinion.

Sincerely,



Elizabeth Leonard McKay
Special Deputy Attorney General



Martin T. McCracken
Assistant Attorney General