Coates' Canons Blog: City Services to Split Lots

By David Lawrence

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I've received three phone calls in recent months from cities wondering about their service responsibilities to properties that are bisected by the city's boundary. My answer is that it depends on where the house – or other building, for nonresidential properties – is located.

For a number of city services and activities, the boundary doesn't really matter. If a crime is committed on the property, the city police will investigate if the crime occurred within the boundary and the sheriff if without. If a fire breaks out, the location of the fire will determine which department is responsible for responding (although more than one department might well respond to such a fire). With respect to zoning, the city's ETJ may make the issue moot; and if there is no ETJ the city will only zone that portion of the property inside the city. The issue really arises principally for utility services, for solid waste collection, and for participation in city recreation programs.

Not only is there no North Carolina case law on point, I couldn't find any law directly on point from other jurisdictions as well. The closest analogues are two sorts of cases: (1) voter registration cases where a jurisdictional boundary runs through a property, or even a house; and (2) school attendance cases, in the same situation. In the voter registration cases in which the dwelling was entirely in or out of the jurisdiction, the rule is consistent – you can only vote where you actually live, and the location of the house determines where you live. A good example is Dukes v. Redmond, 593 S.E.2d 606 (S.C. 2004), where the house was outside the city and therefore its occupants could not vote in city elections. When the house itself is split by the boundary line, the courts are most likely to look to which jurisdiction contains the greater part of the house or, more simply, ask where is the bedroom. A much older case, but one that has the fullest discussion, is Gray v. O'Banion, 138 P. 977 (Cal. Ct. App. 1913).

The school attendance cases are a little more varied in their holdings, at least if the house is split by the boundary lines. Courts in California and Connecticut, based on the specific statutes of those states, essentially have allowed occupants of such a split house to choose which district to send their children to. A Massachusetts court, on the other hand, followed the voting cases and looked to the location of the bedrooms and the greater portions of the dwelling. The case is Teel v. Hamilton-Wenham School District, 433 N.E.2d 907 (Mass. Ct. App. 1982).

These cases focus on exactly where a person might be said to live, with the answer lying ultimately in the location of the person's bedroom. For city services that depend on residence, that sort of rule seems appropriate. Therefore a person's eligibility for participation, as a resident, in city recreation programs is best determined by the location of the bedrooms in that person's residence.

Several other city services, though, are more services to property than they are to people. For these, I would look to the location of the property that is receiving the service or generating the need for the service. Thus, for water and sewer, I would look to the location of the dwelling or other building where the water is consumed or the sewerage generated. If it's inside the city, the customer would be entitled to in-city rates; if outside the city, the customer could be expected to pay extraterritorial rates. With solid waste collection, I would look to the location of the dwelling or the principal nonresidential building or buildings, on the assumption that most waste is generated from the dwelling or those other buildings.

It might be that a strict adherence to these principles would lead to considering a property inside the city for some services and outside for others, which may be confusing and difficult to defend with the public. For that reason, my suggestion would be to focus on the location of the dwelling, for residential properties, and on the location of the principal building or buildings, for nonresidential properties, and let that determine the treatment of the property for all services.

What I've just written is my best estimate of the extent of a city's *duty* to provide services to a split lot. It may be that a city could by policy be more generous to such lots, following a rule that if any portion of a lot was within the city, the city would

proceed as if the entire lot were within. I don't know of a reason why such a more generous policy would be impermissible.

I would be interested in comments from any cities that have had to deal with this issue and in how they have decided to proceed.

David Lawrence is retired from the faculty of the School of Government. For questions about the subject of this blog post, please refer to our **list of faculty expertise** to identify the appropriate faculty member to contact.

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