

**LETTER OPINION
2001-L-39**

October 9, 2001

Honorable Ray H. Wikenheiser
State Representative District 28
601 East Elm
Linton, ND 58552-0816

Dear Representative Wikenheiser:

Thank you for asking my opinion about whether the City of Linton can change the ratio for distribution of Linton's sale tax proceeds by ordinance without a vote of city electors.

The City of Linton adopted a home rule charter (Charter) at a special election June 8, 1993. Article 3 of the Charter authorized a 1% retail sales tax if implemented by ordinance. Paragraph (d) of the article specified that "[t]he proceeds of any city sales tax shall be dedicated only to capital improvements and economic development." On August 2, 1993, the Linton city council unanimously passed ordinance 93-7-1 which implemented the 1% city sales tax.¹ Section 9(1) of ordinance 93-7-1 provides that sales tax revenues "shall be dedicated only" to capital improvements in the amount of 70% and economic development in the amount of 30%.

In 1999 pursuant to art. 3(f) of the Charter and section 12 of ordinance 93-7-1 the electorate voted to continue the imposition of a 1% city sales tax. See special election Official Ballot dated September 7, 1999, and the minutes of the Linton city council meetings of June 7, 1999, and September 7, 1999. After the vote to extend collection of the city sales tax, ordinance 93-7-1 was amended by ordinance 99-9-4 on September 28, 1999, to provide for continuation of the sales tax until terminated by a vote of the electorate of the City of Linton. The amending ordinance did not address allocation of the sales tax in section 9(1) of the initial implementing ordinance 93-7-1.

You specifically ask whether the Linton city council "can change the ratio of the distribution of the Linton city sales tax by ordinance, or whether it will take a vote of the electors of the City of Linton to make that change?"

¹ See N.D.C.C. § 40-05.1-06(2), (16); 2000 N.D. Op. Att'y Gen. F-04 (explaining that the power to levy city sales taxes must be authorized by a home rule charter and implemented through city ordinances).

In my opinion the ratio of the distribution of sales tax revenue can be changed by ordinance without a vote of the electors. Ordinance 93-7-1 as amended by ordinance 99-9-4 providing for continuation of the sales tax until terminated by a vote is still in effect. As noted above, section 9(1) of the implementing ordinance allocates sales tax revenue for capital improvements in the amount of 70% and for economic development in the amount of 30%. While home rule charters must be amended or repealed by a majority vote of city electors, there is no statutory requirement that the adoption, amendment or repeal of an implementing ordinance be approved by a vote. N.D.C.C. chapter 40-05.1.

Thus it is my opinion that the implementing ordinance, which in this case provides for a 70% – 30% allocation of sales tax revenue between capital improvements and economic development, may be amended the same as any other ordinance.²

Sincerely,

Wayne Stenehjem
Attorney General

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² See Section 40-05.1-06 (providing generally that state statutes, including those relating to adoption of ordinances, apply to home rule cities); N.D.C.C. § 40-05-01(1) (relating to city ordinances generally); art. 3, Charter (stating that a sales tax may be implemented by ordinance). See also 2000 N.D. Op. Att’y Gen. F-04, p.3 (observing that if a home rule charter authorizes an unlimited sales tax “then increases in sales tax may be provided by ordinance adopted by the governing body to implement the home rule charter provision for sales taxes”).