

**LETTER OPINION
2011-L-03**

March 14, 2011

Mr. Howard Swanson
Grand Forks City Attorney
PO Box 12909
Grand Forks, ND 58208-2909

Thank you for your letter requesting my opinion regarding the term of office and number of members of the members of the Grand Forks Municipal Library Board. For the reasons stated below, it is my opinion that a home rule city such as the City of Grand Forks may increase the number of members of its Library Board, by ordinance, beyond the number provided for by N.D.C.C. § 40-38-03, and may alter or eliminate, by ordinance, the term limits provided for by N.D.C.C. § 40-38-03, for members of its Library Board.

ANALYSIS

State law provides that the governing body of a city “which has established a public library . . . shall appoint a board of five directors”¹ Each director “shall hold office for a term of three years No member . . . shall serve for more than two consecutive terms, after which an interval of one year must elapse before the same member may be reappointed.”² You stated that the Grand Forks Municipal Library Board may ask the Grand Forks City Council to enlarge its membership, lengthen the term of appointment for its members, and possibly expand or eliminate the statutory term limit.

¹ N.D.C.C. § 40-38-03.

² Id.

State law provides for city home rule.³ The intention of the home rule chapter is to give to the people of home rule cities the “full right of self-government in both local and city matters within the powers” listed in the home rule chapter.⁴ “The charter and the ordinances made pursuant to the charter . . . supersede within the territorial limits and other jurisdiction of the city any law of the state in conflict with the charter and ordinances and must be liberally construed for such purposes.”⁵

The Grand Forks city voters have approved a home rule charter for the City of Grand Forks.⁶ The Grand Forks Home Rule Charter contains the following power that is substantially equivalent to the one listed in state law: “[t]o provide for city officers, agencies and employees, their selection, terms, powers, qualifications, and compensation.”⁷

This provision would allow the City of Grand Forks to change, by ordinance, the number of members of its Library Board, alter the terms, or eliminate the term limit, for members of the Library Board⁸ if this is a local matter, as opposed to a matter of statewide concern.⁹

³ See N.D.C.C. ch. 40-05.1. See also N.D. Const. art. VII, § 6 (“The legislative assembly shall provide by law for the establishment and exercise of home rule in counties and cities.”).

⁴ N.D.C.C. § 40-05.1-06. See also N.D.C.C. § 40-05.1-05 (If a majority of the city voters approve a home rule charter, the charter is the organic law of the city, and extends to all of its local and city matters.).

⁵ N.D.C.C. § 40-05.1-05. See also N.D.C.C. § 40-05.1-06.

⁶ Home Rule Charter - City of Grand Forks, arts. I-XI (As approved by the electorate of the City of Grand Forks at a Special Election held on November 3, 1970, and as subsequently amended on April 3, 1984; November 6, 1984; September 21, 1987; November 28, 1995; and February 22, 2000); see N.D.C.C. §§ 40-05.1-04 and 40-05.1-05.

⁷ Home Rule Charter - City of Grand Forks, art III, (d). See also N.D.C.C. § 40-05.1-06(4) (If included in the charter and implemented through ordinances, a home rule city may have the power “[t]o provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation.”) and N.D.C.C. § 40-05.1-00.1(1) (“City officers’ means the elected and appointed officers of the city . . .”).

⁸ Cf. Litten v. City of Fargo, 294 N.W.2d 628, 634 (N.D. 1980) (the term “city officers” as found in N.D.C.C. § 40-05.1-06(4) is not the executive or “governing body” of the city but is intended to refer only to individual officers, either elected or appointed.).

⁹ See N.D.C.C. §§ 40-05.1-05 (a home rule charter “extends to all [a city’s] local and city matters”) and 40-05.1-06 (a home rule city is granted “the full right of self-government in both local and city matters within the powers enumerated [in N.D.C.C. ch. 40-05.1]”), N.D.A.G. 97-L-155, N.D.A.G. 93-F-23, and 6 McQuillin, Municipal Corporations, § 21.30 (1988).

The Legislature does not specifically provide in state law that the membership and term limits of a library board are matters of statewide concern, or that the membership and term limits could not be changed under home rule authority. Therefore, to determine whether the matter of the membership of a city library board or the terms of the members are of statewide concern, rather than local, one must look to the wording of the state law relating to libraries to determine whether the language, as a whole, evidences an intent that the Legislature considers the membership or terms of the library board to be matters of statewide concern.¹⁰

I have reviewed N.D.C.C. ch. 40-38 regarding public libraries. Under this chapter, a local vote is required to establish and maintain public library service, and the local governing body appoints the board of directors of the library board.¹¹ Nothing in this chapter suggests that the Legislature considered the membership of a city library board or the terms of the members to be matters of statewide concern.

I have also reviewed N.D.C.C. chs. 54-24 through 54-24.4 regarding the state library and librarian, the interstate library compact, state aid to public libraries, regional library cooperatives, and the library coordinating council. The state librarian shall encourage “statewide cooperation among libraries”, and shall “[p]romote and assist libraries . . . in developing and maintaining a computerized . . . statewide data base”¹² The North Dakota library coordinating council may “[s]et the terms and conditions of statewide service contracts with libraries”, “[d]etermine necessary or desirable regional or statewide library programs or services”, and “set statewide policies for reimbursement formulas for reciprocal borrowing.”¹³ The North Dakota library coordinating council shall “[f]acilitate the development of a comprehensive statewide online library catalog, promote statewide resource sharing, and encourage electronic networking among all types of libraries.”¹⁴ Although these state laws encourage or require statewide cooperation by public libraries for various purposes, nothing in these chapters suggests that the Legislature considered the membership of a city library board or the terms of the members to be matters of statewide concern.¹⁵

¹⁰ See N.D.A.G. 94-F-15.

¹¹ See N.D.C.C. §§ 40-38-01 and 40-38-03.

¹² See N.D.C.C. § 54-24-03(5) and (13).

¹³ See N.D.C.C. § 54-24.3-03(6), (7), and (9).

¹⁴ N.D.C.C. § 54-24.4-05(4).

¹⁵ A library, however, must be established and operated in accordance with N.D.C.C. ch. 40-38 to receive state aid. See N.D.C.C. § 54-24.2-01.

LETTER OPINION 2011-L-03
March 14, 2011
Page 4

Therefore, it is my opinion that a home rule city such as the City of Grand Forks may increase the number of members of its Library Board, by ordinance, beyond the number provided for by N.D.C.C. § 40-38-03, and may alter or eliminate, by ordinance, the term limits provided for by N.D.C.C. § 40-38-03, for members of the city's Library Board.¹⁶

Sincerely,

Wayne Stenehjem
Attorney General

las/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹⁷

¹⁶ Consistent with this conclusion, our office has previously concluded that a home rule city or county may, if it has the necessary powers in its charter, adopt an ordinance increasing the mill levy for library services above any mill levy limitation set forth in state law, without voter approval. See N.D.A.G. 2006-L-07.

¹⁷ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).