

**LETTER OPINION  
2011-L-13**

December 22, 2011

The Honorable Craig Headland  
District 29 House of Representatives  
4950 92nd Ave SE  
Montpelier, ND 58472-9630

Dear Representative Headland:

Thank you for your letter requesting an opinion on whether the language in state law or in a county home rule charter governs, regarding the number of petition signatures required in order to amend or repeal the county home rule charter. Based on the following analysis, it is my opinion that state law governs and, therefore, a petition to amend or repeal a county home rule charter must be signed by qualified electors of the county not fewer in number than two percent of the population of the county.

**ANALYSIS**

The North Dakota Constitution states, “[t]he legislative assembly shall provide by law for the establishment and exercise of home rule in counties and cities.”<sup>1</sup> The Legislature provided for city home rule in 1969,<sup>2</sup> and county home rule in 1985.<sup>3</sup> County home rule language is similar to that used for city home rule.<sup>4</sup>

Regarding county home rule, N.D.C.C. § 11-09.1-06 provides, “[t]he home rule charter adopted by any county may be amended or repealed . . . by petition of the number of electors provided in section 11-09.1-01 . . . .”<sup>5</sup> Section 11-09.1-01, N.D.C.C., provides for a petition “signed by qualified electors of the county not fewer in number than two percent

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<sup>1</sup> N.D. Const. art. VII, § 6.

<sup>2</sup> See 1969 N.D. Sess. Laws ch. 371.

<sup>3</sup> See 1985 N.D. Sess. Laws ch. 152.

<sup>4</sup> Compare N.D.C.C. ch. 11-09.1 (regarding county home rule), with N.D.C.C. ch. 40-05.1 (regarding city home rule).

<sup>5</sup> N.D.C.C. § 11-09.1-06.

of the population of the county.”<sup>6</sup> The Stutsman County Home Rule Charter provides that the Charter “may be amended or repealed . . . by petition bearing signatures of qualified voters at least equal in number to fifteen percent of the number of electors voting in the county in the last general election at which a governor was elected.”<sup>7</sup> You ask which prevails, the language in state law or the county home rule charter.

“The legislature’s power to enact laws for the government of political subdivisions includes the power to legislate how home rule charters may be enacted, amended, or repealed.”<sup>8</sup> The Legislature has provided for the enactment, amendment, or repeal of county home rule charters<sup>9</sup> and city home rule charters.<sup>10</sup>

The Legislature has also listed in state law the specific powers a county or city may include in their home rule charters and implement by ordinance.<sup>11</sup> The home rule county or city may govern themselves within these specific powers in a manner that is contrary to other state laws.<sup>12</sup> One of the specific powers listed for home rule counties and home rule cities is the authority to provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out their governmental and proprietary powers.<sup>13</sup> Thus, a home rule county and a home rule city may have a process for the adoption, amendment, or repeal of its ordinances, resolutions, or regulations that is different from that provided for in state law. However, the power to control the manner in which a home rule charter itself is adopted, amended, or repealed is not one of the powers listed by the Legislature over which a home rule county or a home rule city can acquire the right of self-government.

Thus, a home rule county and a home rule city may have the authority to amend or repeal their own ordinances, resolutions, or regulations in a manner different from that provided

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<sup>6</sup> N.D.C.C. § 11-09.1-01.

<sup>7</sup> Stutsman Cnty Home Rule Charter, art. 11.

<sup>8</sup> Pelkey v. City of Fargo, 453 N.W.2d 801, 805 (N.D. 1990).

<sup>9</sup> See N.D.C.C. §§ 11-09.1-06 and 11-09.1-01.

<sup>10</sup> See N.D.C.C. §§ 40-05.1-07 and 40-05.1-02. A petition to amend or repeal a city home rule charter must be signed by not less than 15% of the qualified electors voting in the last city election. See N.D.C.C. § 40-05.1-02. Interestingly, this is the same percentage that appears in the Stutsman County Home Rule Charter that is at issue here.

<sup>11</sup> See N.D.C.C. § 11-09.1-05 regarding county home rule, and N.D.C.C. § 40-05.1-06 regarding city home rule.

<sup>12</sup> See N.D.C.C. §§ 11-09.1-04 and 11-09.1-05 regarding county home rule, and N.D.C.C. §§ 40-05.1-05 and 40-05.1-06 regarding city home rule.

<sup>13</sup> See N.D.C.C. § 11-09.1-05(5) regarding county home rule, and N.D.C.C. § 40-05.1-06(7) regarding city home rule.

for in state law, but they do not have the authority to control the manner in which the home rule charter itself is amended or repealed.

Consistent with this analysis, a 1977 Attorney General's opinion concluded that a city home rule charter could be amended or repealed only in the manner provided for in state law, but the ordinances of the home rule city could be amended or repealed in a manner provided for in the city home rule charter.<sup>14</sup>

It is, therefore, my opinion that a county home rule charter may be amended or repealed only in the manner provided for in state law. Thus, a petition to amend or repeal a county home rule charter must be signed by qualified electors of the county not fewer in number than two percent of the population of the county, as provided in N.D.C.C. § 11-09.1-01.<sup>15</sup>

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.<sup>16</sup>

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<sup>14</sup> See N.D.A.G. 77-11.

<sup>15</sup> The provision in the Stutsman County Home Rule Charter stating that a petition to amend or repeal the Charter be signed by "qualified voters at least equal in number to fifteen percent of the number of electors voting in the county in the last general election at which a governor was elected" is ineffectual, because state law does not give a home rule county the power to change the process provided for in state law by which the home rule charter can be amended or repealed.

<sup>16</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).