

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 96-F-17

Date Issued: August 16, 1996

Requested by: Garylle B. Stewart, Fargo City Attorney

- QUESTION PRESENTED -

Whether a home rule city with a population in excess of 10,000 may utilize, by adoption of appropriate ordinances, the special assessment scheme set forth in N.D.C.C. chapter 40-22.1, regarding special assessments for the promotion of business activity.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a home rule city with a population in excess of 10,000 may utilize, by adoption of appropriate ordinances, the special assessment scheme set forth in N.D.C.C. chapter 40-22.1, regarding special assessments for the promotion of business activity, if the necessary powers are included in the city's home rule charter.

- ANALYSIS -

N.D.C.C. ch. 40-22.1 authorizes a city to establish a special assessment district to defray the expense of improvements for the promotion of business activity. However, this authority is specifically limited to cities with a population of 10,000 or less. See N.D.C.C. § 40-22.1-01.

Home rule cities may acquire the powers specified in N.D.C.C. § 40-05.1-06 if those powers are included in their home rule charters and are implemented through ordinances. N.D.C.C. § 40-05.1-06. A city's home rule charter may include the following powers:

To control its finances and fiscal affairs; . . . to levy and collect taxes, excises, fees, charges, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; . . . provided that all real and personal property in order to be subject to the assessment provisions of this subsection shall be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments.

N.D.C.C. § 40-05.1-06(2) (emphasis added). State statutes, "so far as applicable, shall continue to apply to home rule cities, except

insofar as superseded by the charters of such cities or by ordinance passed pursuant to such charters." N.D.C.C. § 40-05.1-06.

Fargo's home rule charter includes the following powers:

To control its finances and fiscal affairs; . . . to levy and collect taxes, excises, fees, charges, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; . . . . The foregoing mill levy limitation [of 64 mills] shall not apply to improvements by special assessments or any mill levies necessary to provide funds for special assessment deficiencies provided that all real and personal property, in order to be subject to the assessment provisions of this subsection shall be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments.

Home Rule Charter, City of Fargo, N.D., Art. 3, B (1992) (emphasis added). Thus, it is my opinion that the city of Fargo has the necessary authority in its home rule charter to establish, by ordinance, a special assessment scheme for the promotion of business activity similar to that authorized in N.D.C.C. ch. 40-22.1 for cities with a population of 10,000 or less. Fargo's home rule charter also provides "[n]o city-wide special assessment district shall be established unless the question of establishing such a district has been submitted to a vote of the qualified electors of Fargo and has been approved by sixty percent of such electors voting on such question." Home Rule Charter, City of Fargo, N.D., Amendment #1 (1992).

An ordinance implementing a power in a home rule charter must be sufficiently detailed so that the public is properly informed of the special assessment scheme. See Litten v. City of Fargo, 294 N.W.2d 628, 634 (N.D. 1980).

When a city is attempting to draft an ordinance to implement a provision in its home rule charter, it may be helpful to review other statutes on the same subject matter. If the statutes are sufficiently detailed to inform the public of the . . . [special assessment scheme], then the city may choose to pattern its ordinance after the statute. The particular terms of the ordinance need not be the same as those in the statute, however. See City of Fargo v. Fahrlander, 199 N.W.2d 30 (N.D. 1972)

ATTORNEY GENERAL'S OPINION 96-17  
August 16, 1996  
Page 3

(ordinance need not repeat exact language of similar state statute to be valid).

1993 N.D. Op. Att'y Gen. 40, 42. Thus, it is my opinion that the city of Fargo may, but is not required to, utilize the special assessment scheme set forth in N.D.C.C. ch. 40-22.1.

- EFFECT -

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.

Heidi Heitkamp  
ATTORNEY GENERAL

Assisted by: Leah Ann Schneider  
Assistant Attorney General

jrs