

LETTER OPINION
97-L-172

October 23, 1997

Mr. Ross L. Sundeen
Dunn County State's Attorney
PO Box 747
Killdeer, ND 58640-0747

Dear Mr. Sundeen:

Thank you for your letter asking about interpretation of city home rule charter language on maximum property tax mill levies.

The charter language you question is:

. . . and to establish debt and mill levy limitations, provided that the mill levies ordered imposed by the governing body on taxable property subject to ad valorem taxation shall not exceed in total the sum of levies authorized by state statutes and the constitution for cities of similar classification. . . .

The governing body shall be permitted to publish the city budget without regard to the specific dedications of mill levies to specific purposes as long as the total of the budget is not more tha[n] the total amount of mills authorized to be levied by a city.

Because some statutory levy amounts have specific numerical limitations, whereas others are unlimited, you ask whether the above-quoted language allows a city to levy an unlimited amount.

The Office of Attorney General does not, as a general matter, interpret local ordinances or charter language. However, a number of North Dakota home rule cities have the same or similar tax levy authority language in their home rule charters. Because the property tax levy system involves county auditors and their levy responsibilities under state law, in addition to city governments, this issue is of statewide significance meriting interpretation of the charter language by this office. See 1994 N.D. Op. Att'y Gen. 64.

"A home rule city can acquire powers beyond those specified in state law by including any or all of the powers listed in N.D.C.C. § 40-05.1-06 in its home rule charter and then implementing those

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powers through ordinances." 1996 N.D. Op. Att'y Gen. L-142 (August 12 letter to Tony Grindberg). Cities may thus exceed state mill levy limitations only if the charter and ordinances implementing the charter provide for it. Letter from Attorney General Allen Olson to Dean Winkjer (July 19, 1976).

Courts apply the general rules of statutory construction to municipal ordinances. City of Bismarck v. Sholy, 430 N.W.2d 337 (N.D. 1988). Meaning must be given to all parts of legislation so no part is rendered useless. Legislative bodies are presumed not to perform idle acts, and interpretations of legislation are to be made to avoid absurd or ludicrous results. Litten v. City of Fargo, 294 N.W.2d 628, 633 (N.D. 1980). Therefore, in examining the charter language, the mill levy and budget limits in those paragraphs must be given meaning if such interpretation is possible.

The first paragraph of the charter language cited above allows the city to establish debt and mill levy limits; however, levies may not exceed the total "sum of levies authorized by state statutes." Many state statutes have a numerical mill levy limitation, the "sum" of which would be a finite number. Other state statutes authorize cities to levy taxes on certain subjects, but do not impose a numerical limitation. These "unlimited" levies would not total to a statutory "sum." The State Tax Commissioner's office prepares a schedule of mill levy authority for taxing districts, a copy of which you attached to your letter.

Unless otherwise provided by home rule charters and implementing ordinances, city budget preparation must be performed under N.D.C.C. § 40-40-05, with the appropriate detail. N.D.C.C. § 40-40-06 requires publication that a city's preliminary budget statement is available and that a public meeting will be held to receive comments or objections to any item in the budget.

The second paragraph of the charter language quoted above deals with publishing a city budget without regard to dedications. This language refers to the publishing of a budget statement under N.D.C.C. § 40-40-06, but it does not relieve the city from actually budgeting for the subjects upon which it intends to tax.

The charter language in these paragraphs establishes a tax limit for the city, and it would be unreasonable and illogical to hold that because levy authority for some city purposes is not limited numerically, the city could therefore ignore its charter language and

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tax without limitation for all purposes. Such a holding would render useless the self-imposed limitation on mill levies in the charter.

It is my opinion, therefore, that a city with the referenced charter language, if its implementing ordinances are consistent, must budget for its tax levies and expenditures in the manner provided by N.D.C.C. § 40-40-05, and that the total "sum" of its levies for which a state statute provides a numerical limitation may not exceed the state statutory limit for all levy items that have numerical limits. For those levies that have no statutory numerical limitation, a city with the referenced charter language, if supported by its implementing ordinances, would likewise not be limited in its levying authority for those purposes. The budget prepared under N.D.C.C. § 40-40-05 would indicate the city's basis for imposing those additional levies.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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