

OPINION
69-50

October 27, 1969 (OPINION)

Mr. J. Howard Stormon

City Attorney

Rolla, North Dakota

RE: Cities - Ordinance - Right of Referendum

This is in reply to your letter of October 21, 1969, requesting our opinion whether an ordinance which has been adopted by the governing body of your city may be referred to the electors of the city by a petition protecting against such ordinance. Your question is restated as: "* * * do the electors have the right of referendum."

You call our attention to Chapter 40-12, and more particularly Section 40-12-01 of the North Dakota Century Code. You state that your city has been a city since 1908, there was never any petition of electors to adopt the so-called "modern" council system, there was never any vote of the electors to adopt that system, and there was never any proceedings to organize under the commission system. You inform us further that your city does have a mayor and six member council under Section 40-08-03 of the North Dakota Century Code, as amended to date.

You also mention the possibility of changeover from council to "modern" council city and procedure therefor.

Section 40-12-01 of the North Dakota Century Code provides:

INITIATIVE AND REFERENDUM APPLY ONLY IN COMMISSION AND MODERN COUNCIL CITIES. The provisions of this chapter relative to the initiating and referring of municipal ordinances shall apply only in cities operating under the commission and modern council system of government except those cities adopting the eleven-member council."

We find no statutory authorization for initiative and referendum in cities other than that contained in said Section 40-12-01. We note further the general statement in 62 C.J.S., 868, 870, MUNICIPAL CORPORATIONS, Section 451, that:

a. In General

The power of enacting ordinances by initiative and referendum may be reserved to the electors of the municipal corporation by the state constitution, by statute, or by the municipal charter."

In that same section we note at Page 870 the statement, as follows:

ORDINANCES. Unless authorized by organic law or by charter or general statute, a municipal council is without authority to

pass ordinances providing for a referendum of any kind. A general welfare clause in a city charter confers no such power. A council of a municipal corporation, operating under a freeholders' charter, which charter has no provision for a referendum, has no power to confer such power on the electors of the corporation, since such action is regarded as a delegation of the legislative power of the council."

On such basis it is our opinion that the electors of your city do not have a right of referendum and that same cannot be conferred upon them by municipal ordinance.

Noting that Section 40-02-01 of the North Dakota Century Code does provide as alternatives creation of either "modern" council or council forms of city governments, we would assume that these are currently two distinct forms of city government in this state and, therefore, conclude that there is no automatic changeover from council form of city government to "modern" council form of city government.

As to method of changing from council form of city government to "modern" council form of city government, see Section 40-03.2-01 as same is included in the 1969 Supplement to the North Dakota Century Code. As you will note this includes both petition and election, which may constitute a time consuming process if the only objective is to achieve initiative and referendum authority in your electors. If you are actually considering an overall change in the form of city government, you might also consider the possibilities inherent in the commission form of city government, city manager or the new "home rule" form.

HELGI JOHANNESON

Attorney General