

OPINION
73-82

August 28, 1973 (OPINION)

Mr. Hugh McCutcheon
BOSARD, McCUTCHEON, KERIAN,
SCHMIDT AND HOLUM
Attorneys and Counselors at Law
Heritage Place
Minot, ND 58701

Dear Mr. McCutcheon:

This is in response to your letter in which you ask for an opinion of this office whether or not an ordinance which imposes a 2 percent tax on the gross revenues of Northern States Power Company is subject to referral. You also provide us with an opinion on the subject matter.

Ordinance 1849 imposes a 2 percent tax on the gross revenues of Northern States Power Company. Ordinance 850 constitutes the annual appropriation and tax levy. The appropriation and the amount of levy did take into account the income from the 2 percent tax on gross revenues of Northern States Power Company.

Minot has adopted home rule and under Article 4 section 1, it is provided that the power of the initiative and referendum is not extended to the annual appropriation ordinances, nor to its ordinances implementing public projects upon which an election has previously been held, or special improvement projects under which the law provides for.

From the material submitted it appears that the two ordinances mentioned were considered together, and may have been treated as a package by the city governing body. The opinion you rendered sets forth a strong case showing the interdependency and interrelationship between tax ordinances and appropriations. The arguments presented are impressive as to why tax ordinances probably should not be subject to a referral, if that were the question, and also why tax ordinances are in many instances an integral part of the appropriations. However, the home rule charter merely excludes appropriations from the power of referral. Tax measures are not excluded from such power.

We have found no cases which construe the term "appropriation measures" to include any measure or proposal which goes into the making of the final appropriation measure. We are aware that if the term "appropriation" were to be given a broad meaning to include any and all items that go into making the final product, nearly every tax measure would be part of such appropriation, but this is not the situation. Some of the city charters exclude tax measures from referral as distinguished from appropriation. This appears to be a judgment factor to be exercised by the electorate at the time of the adoption of the home rule charter.

While you have given many valid reasons why tax ordinances should not be subject to referral, we are of the opinion that the home rule

charter which merely excludes appropriation ordinances from referral is not broad enough to include tax measures.

It is therefore that Ordinance Number 1849 is subject to referral.

I trust this answers your inquiry.

Sincerely,

ALLEN I. OLSON

Attorney General