

**OPINION**  
**76-17**

July 19, 1976            (OPINION)

Mr. Dean Winkjer  
Representative, District 1  
Box 1261  
Williston, ND 58801

Dear Representative Winkjer:

This is in reply to your letter of June 24, 1976, in which you request the opinion of this office on the question of whether a city operating under a home rule charter may impose levy limitations on real property in excess of those allowed cities which do not operate under home rule charters.

We have examined a number of court decisions and legal discussions concerning this subject. Due to the great variety of laws and constitutional provisions establishing home rule in other states, and the uniqueness of the fact situations involved in the court decisions, such cases and discussions were of little direct value. However, an examination of the statutory language pertaining to home rule in North Dakota appears sufficiently clear so as not to require the application of court decisions from other states.

Section 130 of the Constitution of North Dakota, found at Article VI, provides in part that:

"the legislative assembly shall provide by law for the establishment of home rule in cities and villages. It may authorize such cities and villages to exercise all or a portion of any power or function which the legislative assembly has power to devolve upon a nonhome rule city or village, not denied to such city or village by its own home rule charter and which is not denied to all home rule cities and villages by statute. The legislative assembly shall not be restricted in granting of home rule powers to home rule cities and villages by Section 183 of this constitution." (emphasis added)

Section 183 pertains to debt levy limitations for political subdivisions, including cities.

Section 40-05.1-06 of the North Dakota Century Code sets forth the powers granted by the legislature, pursuant to the constitutional provision, to home rule cities. Subsection 2 of that section provides in part that a home rule city shall have the power to:

"control its finances and fiscal affairs . . . and to establish debt and mill levy limitations, 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." (emphasis added)

Two basic principles of law applicable to this discussion are that

cities have only those powers which are granted to them by the legislative assembly, and no city, even a home rule city, may undertake activities which the legislative assembly has preempted, (such as the issuance of drivers licenses, for example). However, it is apparent from the foregoing excerpts of the Constitution and statutes that the intent is to allow a home rule city to establish debt and mill levy limitations in excess of those set by the Constitution or Legislative Assembly for nonhome rule cities.

Sincerely,

ALLEN I. OLSON

Attorney General