

Overruled in part by [Sauby v. City of Fargo, 747 NW2d 65 \(N.D. 2008\)](#)

Office of the Attorney General
State of North Dakota

Opinion No. 82-62

Date Issued: August 19, 1982

Requested by: Richard W. Olson
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--QUESTIONS PRESENTED--

I.

Whether a non-home rule city may establish a fee for violations of speed limit ordinances where the fee exceeds the amount set forth in Section 39-06.1-06 of the North Dakota Century Code.

II.

Whether a home rule city may establish a fee for violations of speed limit ordinances where the fee exceeds the amount set forth in Section 39-06.1-06, N.D.C.C.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that a non-home rule city may not establish a fee for violations of speed limits ordinances where the fee exceeds the amount set forth in Section 39-06.1-06, N.D.C.C.

II.

It is my further opinion that a home rule city may establish a fee for violations of speed limit ordinances where the fee exceeds the amount set forth in Section 39-06.1-06, N.D.C.C.

--ANALYSIS--

I.

All North Dakota cities have statutory authority to regulate the speed of motor vehicles within their corporate limits. See Section 40-05-01(18), N.D.C.C. In providing

for violations of these ordinances regulating motor vehicles and traffic, fees may be established by ordinance, but may not exceed the amount provided for in state law. Section 40-05-06(2), N.D.C.C., states as follows:

40-05-06. CITY FINES AND PENALTIES LIMITED.

2. For every violation of a city ordinance regulating the operation or equipment of motor vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, a fee may be established, by ordinance, which shall not exceed the limits, for equivalent categories of violations, set forth in section 39-06.1-06.

Section 39-06.1-06, N.D.C.C., mentioned in the above statute, provides that fees for moving violations shall be in the amount of twenty dollars. Moving violations, and their equivalent ordinances, are defined by Section 39-06.1-09, N.D.C.C., to include speeding violations. Therefore, a violation of a city ordinance regulating the speed of a motor vehicle is a moving violation. As such, the maximum fee which the non-home rule city may charge for a violation of its speeding ordinance cannot exceed the amount of twenty dollars as provided for in Section 39-06.1-06, N.D.C.C.

II.

As stated, state law, as provided for in Section 40-05-06(2), N.D.C.C., restricts fees for violations of city ordinances regulating motor vehicles and traffic to the amount set forth in Section 39-06.1-06, N.D.C.C. (twenty dollars). However, cities which have adopted a home rule charter and have implemented its charter powers by ordinance shall supersede conflicting state law within the jurisdiction of the city. Section 40-05.1-05, N.D.C.C., states, in part as follows:

Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of the city any law of the state in conflict therewith, and shall be liberally construed for such purposes.

In *Litten vs. City of Fargo*, 294 N.W.2d 628 (N.D. 1980), our Supreme Court stated that the supersession provision set out in Section 40-05.1-05, N.D.C.C., applied only to those powers listed in Section 40-05.1-06, N.D.C.C., provided they are also included in the home rule charter and actually implemented by city ordinance.

Section 40-05.1-06, N.D.C.C., as to the power of home rule cities, provides two subsections which authorize home rule cities to enact ordinances as to traffic and motor vehicle regulations and to provide penalties for violations of same. These two subsections state as follows:

7. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.

9. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.

The concluding sentence of Section 40-05.1-06, N.D.C.C., states as follows:

The statutes of the state of North Dakota, 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.

A home rule city does possess the statutory power to enact ordinances regulating traffic and motor vehicle activity within its city limits. Where such authority is included in the city's home rule charter and implemented by city ordinance, as required by *Litten v. City of Fargo*, supra, such ordinance shall supersede conflicting state laws. Where a home rule city charter and ordinance provides for fees for violations of city ordinances regulating motor vehicles and traffic in amounts exceeding the limits stated in Section 39-06.1-06, N.D.C.C., the state law shall be superseded by the home rule city ordinance only within the jurisdiction of the city.

Officials of home rule cities should be once again reminded that the supersession provisions set out in Section 40-05.1-05, N.D.C.C., will work with respect to conflicting state laws only when such authority is included in the home rule city charter and implemented by city ordinance. See *Litten v. City of Fargo*, 294 N.W.2d 628, 632 (N.D. 1980).

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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