

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 92-07

Date issued: March 5, 1992

Requested by: Charlie Whitman, Bismarck City Attorney

- QUESTION PRESENTED -

Whether N. D. C. C. ' 40-05.1-09 prohibits the submission to the electorate of a proposal to amend or repeal a home rule charter if such proposal would not amend or repeal the same language or address the same subject matter as any proposal submitted to the electorate within the two-year period preceding the proposed election.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that N. D. C. C. ' 40-05.1-09 does not prohibit the submission to the electorate of a proposal to amend or repeal a home rule charter unless such proposal would amend or repeal the same language or address the same subject matter as a proposal submitted to the electorate within the two-year period preceding the proposed election.

- ANALYSIS -

North Dakota Century Code ch. 40-05.1 describes the manner and extent to which a city may govern itself by home rule. Relevant sections of this chapter state:

40-05.1-07. Amendment or repeal. The home rule charter adopted by any city may be amended or repealed by proposals submitted to and ratified by the qualified electors of the city . . .

40-05.1-09. Restriction on proposals to amend or repeal. Any proposal to amend or repeal home rule charters shall not be submitted to the electorate more often than every two years.

N. D. C. C. " 40-05.1-07, 40-05.1-09. If a proposal to amend particular language in the home rule charter is submitted to the electorate, N. D. C. C. ' 40-05.1-09 would prohibit the submission to the electorate within the next two years of a proposal to amend or repeal that same language or a proposal which addresses that same subject matter. Likewise, if a proposal to repeal all or a part of the home rule charter is submitted to the electorate, N. D. C. C. ' 40-05.1-09 would prohibit the submission to the electorate within the next two years of a proposal to amend or repeal that same language or which addresses that same subject matter.

The North Dakota Supreme Court has stated, in regard to the two year time restriction, that "[t]he legislature acted within its authority in enacting a time restriction under Section 40-05.1-09, NDCC, for reconsidering proposals to amend a home rule charter." Pelkey v. City of Fargo, 453 N.W.2d 801, 805 (N.D. 1990). This language indicates that the North Dakota Supreme Court would interpret N.D.C.C. ' 40-05.1-09 to prohibit the submission to the electorate more often than every two years only of a proposal to amend or repeal the same language which had been amended or repealed by a previous proposal or which addresses the same subject matter as a previous proposal.

In conclusion, it is my opinion that N.D.C.C. ' 40-05.1-09 does not prohibit the submission to the electorate of a proposal to amend or repeal all or part of a home rule charter unless the subject of the proposal had been submitted to the voters within the two years preceding the date of the proposed election.

- EFFECT -

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

Nicholas J. Spaeth  
Attorney General

Assisted by: Leah Ann Schneider  
Assistant Attorney General

krb