

LETTER OPINION
95-L-97

April 17, 1995

Mr. Michael G. Sturdevant
Berthold City Attorney
P.O. Box 970
Minot, ND 58702-0970

Dear Mr. Sturdevant:

Thank you for your March 3, 1995, letter asking me to reconsider opinions written by my two immediate predecessors in office on home rule city authority to adopt city sales and use taxes. The opinions you refer to are Letter from Attorney General Robert O. Wefald to Jay H. Fiedler (March 7, 1984) and Letter from Attorney General Nicholas J. Spaeth to Kenneth L. Dalsted (January 16, 1991).

Your request is based on the 1977 enactment of N.D.C.C. ? 57-01-02.1, which authorizes the State Tax Commissioner to contract with home rule cities to collect sales and use taxes imposed by those cities. As you note, this section of law was not discussed in either of the two above-noted opinions.

Authority for the creation of home rule cities was enacted in 1969 by the Legislative Assembly. 1969 N.D. Sess. Laws ch. 371. Section 6 of that chapter stated powers of home rule cities. Taxes were mentioned in subsection 2 of section 6 allowing home rule cities "to levy and collect taxes, excises, fees, charges and special assessments," and in subsection 12 of section 6 allowing home rule cities "to levy and collect franchise and license taxes for revenue purposes." This section became N.D.C.C. ? 40-05.1-06. It was not until 1983 that a new subsection to N.D.C.C. ? 40-05.1-06 was enacted specifying that home rule cities could "impose registration fees on motor vehicles, or sales and use taxes in addition to any other taxes imposed by law." This new subsection was effective July 1, 1984. 1983 N.D. Sess. Laws ch. 428, ?? 2 and 4.

Home rule cities may exercise only the powers provided by law in N.D.C.C. ? 40-05.1-06 if the powers are contained in their charters and are implemented by a city ordinance. Litten v.

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City of Fargo, 294 N.W.2d 628 (N.D. 1980). When the Legislature amends a section of law, it usually indicates an intention to change its meaning because the Legislature is not presumed to do a useless act. Linington v. McLean County, 161 N.W.2d 487, 501 (N.D. 1968). Any material change in the original law is presumed to indicate a legislative intent to change the law, not to interpret what it was originally intended to provide. Walker v. Weilenman, 143 N.W.2d 689, 694 (N.D. 1966).

Therefore, although the type of taxing authority allowed by N.D.C.C. ? 40-05.1-06 in 1969 was not specific, the amendment of that section effective July 1, 1984 (1983 N.D. Sess. Laws ch. 428) indicates clearly that the Legislature intended that a change in the law was to be made that home rule cities be empowered to impose sales and use taxes. The Litten case, decided in 1980, had ruled that any home rule city must provide for its authority in its charter and ordinances and only the powers contained in N.D.C.C. ? 40-05.1-06 could be exercised. Consequently, effective July 1, 1984, a home rule city must specify sales and use taxes in its charter and implementing ordinances to be able to impose them.

Although an argument on the presumed understanding of the Legislature might be made concerning its 1977 enactment of N.D.C.C. ? 57-01-02.1, such enactment did not amend home rule city basic powers to tax, but only authorized a contract with the Tax Commissioner on any sales and use taxes assessed by a home rule city. If, prior to July 1, 1984, a home rule city had actually imposed a general city sales and use tax based on its specific charter authority and ordinances, then a different question might be present. But, after July 1, 1984, if a home rule city wants to impose a city sales and use tax, it must specifically so provide in its charter for such a tax and implement that charter authority with an ordinance. If the home rule charter was adopted before July 1, 1984, without mentioning a sales and use tax, then it must now be amended to so provide if that city is to be able to pass an ordinance on such taxes. That was the conclusion reached by the above-noted Attorney General's opinions, and it is my conclusion that those opinions are correct.

Sincerely,

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Heidi Heitkamp
ATTORNEY GENERAL

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