

N.D.A.G. Letter to Hall (Feb. 5, 1987)

February 5, 1987

Mr. Nicholas B. Hall
Walsh County State's Attorney
Walsh County Courthouse
Grafton, ND 58237

Dear Mr. Hall:

Thank you for your letter of January 21, 1987, regarding election procedures for home rule counties.

According to your letter, there appears to be a conflict between N.D.C.C. § 11-09.1-05(4) (which provides that all matters pertaining to county elections may be determined by a home rule county pursuant to their home rule charter) and 11-09.1-09 (which provides that the elections provided for in N.D.C.C. Ch. 11-09.1 are subject to general election laws). In your letter you suggest this apparent conflict can be reconciled by limiting the effect of N.D.C.C. § 11-09.1-09 to just those elections provided for in N.D.C.C. Ch. 11-09.1 as is suggested by the express language used within this statute.

With this, I am in total agreement and concur with your conclusion that N.D.C.C. § 11-09.1-09 states that the elections provided for in N.D.C.C. Ch. 11-09.1 (which deals with the enactment and modification of the home rule charter) are subject to general election laws. Other matters pertaining to county elections not covered by N.D.C.C. § 11-09.1-09 may be determined pursuant to the home rule charter of the home rule county as provided for in N.D.C.C. § 11-09.1-05(4).

In summary, it is my opinion that a home rule county may implement by ordinance those home rule charter powers determining the matter in which county elections are held so long as the elections provided for in N.D.C.C. Ch. 11-09.1 remain subject to the general election laws of the state.

Your second question is as to the applicability of N.D. Const. Art. X, § 11, restricting the use of revenue from gasoline and motor fuel excise and license taxes as well as other motor vehicle registration and license taxes to uses related to the construction and repair and maintenance of public highways. We have reviewed several North Dakota Supreme Court cases and previous opinions of this office as to the impact of this constitutional provision. It is our conclusion that this constitutional section applies generally to revenue received from these forms of excise and license taxes. At the time this section was enacted into the constitution, home rule powers did not exist for either the city or the county. However, we are unable to locate any indication within the constitution restricting its application only to state revenues as opposed to local revenues.

In summary, given the clear and unambiguous language of N.D. Const. Art. X, § 11 and the failure within that section to distinguish between revenues from statewide sources as opposed to revenues from local sources, the only conclusion that we may draw is that N.D. Const. Art. X, § 11 is indeed applicable to revenues which may be received by a home rule city or county pursuant to their home rule city tax and authorities.

Sincerely,

Nicholas J. Spaeth

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