

N.D.A.G. Letter to Sorenson (April 22, 1987)

April 22, 1987

Honorable William Sorenson
State Representative
206 Estevan Drive
Bismarck, ND 58501

Dear Representative Sorenson:

We have received your request of this office to determine whether citizens have the right to initiate or refer park district ordinances.

North Dakota law as found at N.D.C.C. § 40-12-01, provides for the initiative and referendum to apply only to municipal ordinances of those cities operating under the commission and modern council systems of government except those cities adopting the eleven member form of council government. No mention is made of the power of initiative and referendum applying to ordinances of park districts. Furthermore, N.D.C.C. Ch. 40-49 which concerns parks and park districts does not make any provision as to initiative and referendum powers applying to ordinances of the park district.

There is one statute which may arguably incorporate the municipal power of initiative and referendum to certain park districts depending upon the form of government under which the respective city operates. N.D.C.C. § 40-49-18 states as follows:

40-49-18. GENERAL CODE PROVISIONS TO GOVERN PARK DISTRICTS. Except as otherwise provided in this chapter, the board of park commissioners and its officers and the park district shall be governed, in the issuing of warrants and certificates of indebtedness and in the levying of any tax or special assessment, or in carrying out, enforcing, or making effective any of the powers granted in this chapter, by the provisions of the laws of this state applicable to municipalities of the kind in which the park district is established.

Arguably, in cities where the power of initiative and referendum are available, the park district may also be subject to this power "in carrying out, enforcing, or making effective any of the powers granted" to the park district.

The power to initiate or refer ordinances, however, is not a power of a governing body of the political subdivision involved. Instead, it is a reservation of power by the people to place within themselves the legislative powers concurrent with those of the governing body.

The effect of such amendments [providing the power to initiate and refer], and of statutory provisions for initiative and referendum, is generally to place legislative powers in the Legislature but to reserve to the electorate the concurrent right to propose laws and constitutional amendments and to approve or reject legislative enactments.

42 Am. Jur.2d Initiative and Referendum, §1 at p. 650 (1969).

The provision found at N.D.C.C. § 40-49-18 requiring the board of park commissioners and its officers to be governed by the laws applicable to municipalities in carrying out or enforcing any of its powers cannot be construed as a reservation by the people of the power to initiate or to refer legislative enactments of the park district. Instead, N.D.C.C. § 40-49-18 requires park district authority to be implemented in a manner similar to the manner in which city authority is implemented. A clear statement by the people of any reservation of legislative power as is found in N.D. Const. Art. III, §1 and N.D.C.C. § 40-12-01, cannot be found within the laws governing park districts.

Thus, it is my conclusion that North Dakota law does not contain any legislative reservation by the people of the power to initiate or refer park district ordinances.

Sincerely,

Nicholas J. Spaeth

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