

N.D.A.G. Letter to Hall (July 1, 1987)

July 1, 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 June 19, 1987, inquiring as to the ability of the Walsh County Board of County Commissioners to alter election administration procedures within Walsh County which would affect not only Walsh County elections but also statewide elections occurring within Walsh County.

North Dakota law authorizes home rule counties to adopt ordinances providing for "all matters pertaining to county elections, except as to qualifications of electors." N.D.C.C. § 11-09.1-05(4). On February 5, 1987, I wrote to you and indicated that matters pertaining to county elections not covered by N.D.C.C. § 11-09.1-09 (which concerns the enactment and modification of home rule charters) 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 other words, the administration of county elections is a proper subject of a home rule county charter and a home rule county ordinance. With respect to county elections, ordinances adopted pursuant to N.D.C.C. § 11-09.1-05(4) and in conformity with a home rule charter may supersede state law as to matters pertaining to county elections except as to the qualifications of electors.

However, the authority of a home rule county found at N.D.C.C. § 11-09.1-05(4) does not extend to the administration of statewide elections within that home rule county. The administration of all primary, general, and special statewide and legislative elections are governed by N.D.C.C. title 16.1. N.D.C.C. § 16.1-01-02. The authority of a home rule county to provide for matters pertaining to county elections cannot be assumed to be applicable to matters pertaining to statewide elections held within that county without specific legislative authority. That authority does not currently exist within the powers of a home rule county.

Therefore, it is my opinion that a home rule county does have the power to provide for matters pertaining to county elections, except as to the qualifications of electors, so long as that authority is provided for in the home rule charter and properly implemented by ordinance. This authority, however, does not extend to matters pertaining to the administration of statewide elections in those counties which are governed instead by N.D.C.C. § 16.1-01-02.

Sincerely,

Nicholas J. Spaeth

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