

**N.D.A.G. Letter to Kusler (Sep. 4, 1991)**

September 4, 1991

Honorable Jim Kusler  
Secretary of State  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505-0500

Dear Secretary Kusler:

Thank you for your August 14, 1991, letter regarding the recent election in Bismarck.

North Dakota Century Code (N.D.C.C.) § 40-05.1-07 provides that a city may amend its home rule charter by submitting the issue to the voters of the city pursuant to N.D.C.C. § 40-05.1-04. N.D.C.C. § 40-05.1-07 (1983). As you correctly stated in your letter, N.D.C.C. § 40-05.1-04 requires that an election concerning an amendment to a city's home rule charter be held "not earlier than sixty days nor later than six months after such publication or distribution" of the proposed charter amendment. N.D.C.C. § 40-05.1-04 (1983). An election held at a time other than that which is provided by statute has not been held in compliance with the statute.

The August 6, 1991, election in Bismarck concerned an amendment to the city's home rule charter. Therefore, the election must meet the requirements of N.D.C.C. ch. 40-05.1. The question of whether the publication requirements were met is a question of fact which may be determined after an appropriate investigation.

I hope this discussion aids your investigation.

Sincerely,

Nicholas J. Spaeth

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