

N.D.A.G. Letter to Burke (Aug. 26, 1992)

August 26, 1992

Ms. Patricia L. Burke
Burleigh County State's Attorney
514 East Thayer Avenue
Bismarck, ND 58501

Dear Ms. Burke:

Thank you for your August 14, 1992, letter asking whether a county commission can refuse to accept the proposed home rule charter from the home rule charter commission under N.D.C.C. § 11-09.1-02. You also ask, if the answer to the foregoing question is in the affirmative, does the board of county commissioners have the authority to alter or modify the proposed home rule charter before it is submitted to a vote.

The North Dakota Constitution states:

Section 6. The legislative assembly shall provide by law for the establishment and exercise of home rule in counties and cities. No home rule charter shall become operative in any county or city until submitted to the electors thereof and approved by a majority of those voting thereon. In granting home rule powers to cities, the legislative assembly shall not be restricted by city debt limitations contained in this constitution.

N.D. Const. art. VII, § 6. The Legislative Assembly has provided for the establishment and exercise of home rule in counties pursuant to N.D.C.C. ch. 11-09.1. This statute states that, upon its own motion or upon receipt of a petition, the board of county commissioners must appoint a charter commission to draft the home rule charter. N.D.C.C. §§ 11-09.1-01, 11-09.1-02. "The charter commission shall hold at least one public hearing on the proposed charter and shall prepare and submit the charter to the board of county commissioners within one year after appointment. . . . The board of county commissioners shall publish the proposed charter once in the official newspaper of the county." N.D.C.C. § 11-09.1-02. "At least sixty days after publication, the proposed charter must be submitted to a vote of the qualified electors of the county" N.D.C.C. § 11-09.1-03.

Neither the legislative history nor case law provide any guidance as to the particular issues raised. However, the language of N.D.C.C. ch. 11-09.1 clearly indicates that the draft of the home rule charter proposed to the board of county commissioners by the charter commission is the draft that must be published once in the official newspaper of the county and submitted to the electors for approval. Thus, it is my opinion that the board of county commissioners may not refuse to publish the draft of the home rule charter proposed to it by the charter commission. In addition, the board of county commissioners may not alter

or modify the draft of the proposed home rule charter submitted to them by the charter commission before submitting it to the qualified electors for approval.

This conclusion is supported by certain procedures outlined in N.D.C.C. ch. 11-09.1. It is the charter commission, and not the board of county commissioners, which is required to hold at least one public hearing on the proposed charter. Thus, the charter commission is aware of public input and will consider such input when drafting the proposed charter. In addition, it is the charter commission, and not the board of county commissioners, which must prescribe the form of ballot for the adoption of the home rule charter. N.D.C.C. § 11-09.1-09.

Therefore, it is my opinion that the draft of the charter that is proposed to the board of county commissioners by the charter commission is the draft that must be published by the board of county commissioners and voted upon by the qualified electors. The county commission may express disagreement with the draft submitted to them; however, it has no authority to alter or modify the proposed charter as submitted to it by the charter commission.

I trust I have responded to your questions.

Sincerely,

Nicholas J. Spaeth

las/pg