

N.D.A.G. Letter to Lindgren (Oct. 1, 1992)

October 1, 1992

Hon. Jon G. Lindgren
Mayor
City of Fargo
City Hall
200 North Third Street
Fargo, ND 58102

Hon. Florenz Bjornson
Mayor
City of West Fargo
City Hall
West Fargo, ND 58078

Dear Mayor Lindgren and Mayor Bjornson:

Thank you for your June 5, 1992, letter asking whether a county home rule ordinance applies to a city within the county if the city has not passed an ordinance on the same subject, and whether a county home rule ordinance prevails over a city ordinance where the two conflict.

Political subdivisions such as counties and cities have only those powers expressly conferred upon them by statute, and those powers necessarily implied from powers expressly granted. Murphy v. Swanson, 198 N.W. 116, 119 (N.D. 1924); Ebach v. Ralston, 469 N.W.2d 801, 804 (N.D. 1991). Both counties and cities are authorized to adopt home rule charters and ordinances pursuant thereto. N.D.C.C. chs. 11-09.1 and 40-05.1.

A county home rule charter extends to all county matters. N.D.C.C. § 11-09.1-04.

The [county home rule] charter and the ordinances made pursuant to the charter in county matters must be liberally construed to supersede within the territorial limits and jurisdiction of the county any conflicting state law except for any state law as it applies to cities or any power of a city to govern its own affairs, without the consent of the governing body of the city.

N.D.C.C. § 11-09.1-04 (Emphasis supplied.)

Thus, it is my opinion that, in general, if a state law authorizes a city, whether home rule or otherwise, to adopt an ordinance on a particular matter, a county home rule ordinance will not supersede a city ordinance on that matter. It is further my opinion that, in general, if a state law authorizes a city, whether home rule or otherwise, to govern itself on a particular

matter, a county home rule ordinance on that matter will not apply to the city regardless of whether the city has an ordinance on that matter. Determining whether any specific county home rule ordinance would apply to a city within the county may depend, to some extent, on the other state laws on that particular matter.

Sincerely,

Nicholas J. Spaeth

las/vkk

cc:Bonnie Johnson, Cass County Coordinator