

**LETTER OPINION**  
**93-L-292**

October 12, 1993

Mr. Charles C. Whitman  
Bismarck City Attorney  
221 North Fifth Street  
PO Box 5503  
Bismarck, ND 58502-5503

Dear Mr. Whitman:

Thank you for your September 27, 1993, letter requesting an opinion whether a home rule city such as Bismarck may give certain property tax credits to its citizens.

You indicate that the city of Bismarck, because of the moneys brought in by a city sales tax, currently levies property taxes at a rate of approximately 25 mills less than that which would otherwise be levied.

The tax credit system you propose would be to levy at the higher mill levy and then, at the same time, credit the individual property taxpayers an amount equivalent to approximately 25 mills, the credit being given as the result of revenue from the city sales tax.

Considering that Bismarck is a home rule city, you ask whether there are any statutory or constitutional prohibitions to utilizing the kind of tax credit system proposed.

Article X, Section 18 of the North Dakota Constitution, prohibits a city from making donations to private individuals unless it is done in connection with the city's engaging in a permissible industry, enterprise, or business. N.D. Const. art. X, § 18, *Gripentrog v. City of Wahpeton*, 126 N.W.2d 230 (N.D. 1964). The tax credit proposed would be applied to individual property taxes due, to reduce such property taxes to an amount approximately 25 mills below the

Mr. Charles C. Whitman  
October 12, 1993  
Page 2

amount levied. A particular individual's tax credit would not result from the individual's prepayment of taxes due. It would result from applying city moneys derived from a sales tax to the individual's property taxes due. It is my opinion that using revenues from the city sales tax to reduce individual property taxes in the manner proposed would have the effect of transferring to property owners moneys held for all the people of the city, not just property owners. See Solberg v. State Treasurer, 53 N.W.2d 49, 53-54 (N.D. 1952). Since it does not appear the transfers would be made in connection with the city's engaging in a permissible utility, business, or enterprise, it is my opinion such transfers would violate Article X, Section 18 of the North Dakota Constitution.

N.D.C.C. ? 57-15-31 requires that "[e]stimated revenues from sources other than direct property taxes" be deducted from estimated expenditures and reserve funds to determine the property tax mill levy. This statute would require estimated revenues from sales taxes to be deducted before the property tax levy could be determined. However, Bismarck is a home rule city with the power "[t]o control its finances and fiscal affairs." City of Bismarck's Home Rule Charter, Article 3, filed with the Secretary of State December 17, 1992, N.D.C.C. ? 40-05.1-06(2). Because of its home rule authority to control its finances and fiscal affairs, the city of Bismarck is not required to determine its levy in the manner set forth in N.D.C.C. ? 57-15-31. However, if a different method is to be used, that method must be properly implemented through an ordinance.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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Mr. Charles C. Whitman  
October 12, 1993  
Page 3

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