

N.D.A.G. Letter to Hagen (Aug. 3, 1992)

August 3, 1992

Honorable Craig Hagen
Commissioner of Labor
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Commissioner Hagen:

Thank you for your June 17, 1992, letter concerning the relationship between the federal Fair Labor Standards Act, North Dakota's Minimum Wage and Work Conditions Rules, and home rule ordinances adopted by a North Dakota city or county. You ask for a clarification of my April 1, 1992, opinion on the application to political subdivisions of North Dakota's Minimum Wage and Work Conditions Rules.

In my April 1, 1992, opinion, I determined that North Dakota's Minimum Wage and Work Conditions Rules apply to political subdivisions in North Dakota; however, I noted the potential application of superseding city and county home rule ordinances, as well as the application of the federal Fair Labor Standards Act, 29 U.S.C.A. § 201 et seq. (1978 & Supp. 1992).

A home rule ordinance enacted in conformance with state law and home rule charter supersedes conflicting state law. Litten v. City of Fargo, 294 N.W.2d 628, 632 (N.D. 1980); N.D.C.C. §§ 11-09.1-05, 40-05.1-06. Home rule counties may "[p]rovide for county elected and appointed officers and employees, their selection, powers, duties, qualifications, and compensation" N.D.C.C. § 11-09.1-05(3). Similarly, home rule cities have authority "[t]o provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation." N.D.C.C. § 40-05.1-06(4). Therefore, if a city or county has in its home rule charter the authority to set employee compensation, and has actually done so by the adoption of an ordinance, then the home rule ordinance of the city or county on the subject of how much its employees will be paid supersedes state law and rules adopted thereunder, including the Minimum Wage and Work Conditions Rules adopted under N.D.C.C. ch. 34-06.

The Fair Labor Standards Act also applies to employees of states and their political subdivisions. 29 U.S.C.A. § 203(e) (1978 & Supp. 1992). The Fair Labor Standards Act provides:

No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum workweek lower than the maximum

workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter.

29 U.S.C.A. § 218(a) (1985). This section authorizes the laws or ordinances of states or political subdivisions to be controlling only if they provide for a higher minimum wage or a shorter workweek. The federal Constitution makes the Constitution and laws of the United States the supreme law of the land. U.S. Const. art. VI, cl. 2. Thus, federal law preempts state law where the two conflict, unless federal law authorizes the state law to control. Therefore, even though North Dakota state law would permit the minimum wage set by city or county home rule ordinance to be below the minimum provided in the minimum wage rule adopted under N.D.C.C. ch. 34-06, it may not be lower than the minimum wage established under the Fair Labor Standards Act.

I trust this clarification adequately addresses your question.

Sincerely,

Nicholas J. Spaeth

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