

**LETTER OPINION**  
**99-L-28**

March 30, 1999

Mr. Fabian E. Noack  
Carrington City Attorney  
PO Box 15  
Carrington, ND 58421-0015

Dear Mr. Noack:

Thank you for your letter of January 29, 1999, asking whether a city may charge "user fees" for police and fire protection and other general services to certain charitable organizations owning property that is exempt from ad valorem taxes. Your letter is written in reference to Engrossed House Bill 1051 which was recently declared lost in the House of Representatives. 1999 HJ 156. This legislation related to the "authority of cities to levy special assessments for costs of police and fire protection and certain infrastructure costs against certain charitable organization property exempt from property taxes. . . ."

The question you present is "whether the City of Carrington has the authority to charge 'user fees' to non-profit organizations such as churches, schools, hospitals, houses owned by churches, nursing homes, park districts and similar entities who do not pay consolidated taxes." Additionally, you inquire whether these "user fees" would "violate the North Dakota Constitution or any other North Dakota law."

I addressed this issue in an April 15, 1994, letter to Mr. Charles C. Whitman, Bismarck City Attorney. 1994 N.D. Op. Att'y Gen. L-123. I reached the following conclusion in that letter:

Therefore, it is my opinion that a home rule city may not charge a fee . . . to tax exempt charitable or nonprofit entities for fire and police services where the services to be charged for are generally available to all entities within the city, tax exempt or non-tax exempt alike, and where only tax exempt entities would actually be charged, because the charge imposed would be a tax and the entities you propose to charge are tax exempt under the constitution of North Dakota. See N.D. Const. art. X, § 5.

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1994 N.D. Op. Att'y Gen. at L-126.

This conclusion applies whether a city is home rule or otherwise, because a city has no inherent power except as expressly granted in either a constitutional or statutory provision. Litten v. City of Fargo, 294 N.W.2d 628, 632 (N.D. 1980). Also, the same analysis would apply to prohibit "user fees" for snow removal on city streets fronting tax exempt charitable or nonprofit entities.

I trust that this letter answers your inquiry.

Sincerely,

Heidi Heitkamp  
Attorney General

rww/pg