

**LETTER OPINION
2004-L-28**

April 19, 2004

Mr. Arne Boyum
City of Rolla
PO Box 908
Rolla, ND 58367

Dear Mr. Boyum:

Thank you for asking whether a proposed amendment to the Rolla City Home Rule Charter (Charter) requiring a 60 percent majority vote to increase taxes, if passed by the electorate, will be valid and binding on the city council.

It is my opinion that the proposed amendment to the Charter requiring a 60 percent majority vote to increase taxes, if passed in conformity with state law, will be legally valid and binding on the city governing body and its citizens.

You advise that a petition filed with the city auditor seeks to amend Article III(2) of the Charter substantially as follows¹:

To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings and improvements; to contract debts, borrow money, issue bonds, warrants and other evidences of indebtedness; to establish charges for any city or other services, and to establish debt and mill levy limitations, provided that the mill levies ordered imposed by the governing body on taxable property subject to ad valorem taxation shall not exceed in total the sum of levies authorized by state statutes and the constitution for cities of similar classification to that of the City of Rolla, and provided further that the governing body of the City of Rolla shall spend no more than \$500,000.00 on any project or related elements of said project that

¹ The petition repeals Article III(2) and substitutes in part the identical language quoted except that the underlined language is new.

will cause the citizenry an increase in any type of taxation without the approval of the electorate, further the passage by the electorate for any such expenditure shall require 60% of the electorate vote in order to be approved and authorized by the electorate.

(Emphasis supplied.)

Home rule charters may be amended by a majority vote of the electors. N.D.C.C. §§ 40-05.1-07, 40-05.1-04, 40-05.1-05. Charter “amendments supersede amended parts.” 2A Eugene McQuillin, The Law of Municipal Corporations § 9.24 (3d ed. 1996). The “changed provisions become at once a part of the charter, thereby supplanting or modifying the original provisions to the extent of any conflict.” Id.

If included in its charter and implemented through ordinances, a home rule city may exercise the powers listed in N.D.C.C. § 40-05.1-06. A home rule city and its citizens can assume broad control over their finances and fiscal affairs. N.D.C.C. § 40-05.1-06(2); N.D.A.G. 95-L-115. Rolla’s Charter contains most of the statutory language prescribing the broad powers of a home rule city to control its finances and fiscal affairs set out in N.D.C.C. § 40-05.1-06(2).

Chapter 40-05.1, N.D.C.C., authorizing home rule, is intended “to grant and confirm to the people of [a home rule city] the full right of self-government in both local and city matters within the powers enumerated [in that chapter].” N.D.C.C. § 40-05.1-06. Properly adopted home rule charters and ordinances supersede any conflicting law of the state and are to be liberally construed. N.D.C.C. § 40-05.1-05; N.D.A.G. 95-L-79.

The proposed amendment requires a 60 percent or super majority vote of the electorate before the city may expend funds on a project costing \$500,000 or more if that project cost will result in an increase in any city taxes. You question whether the requirement of a super majority is valid. The power given to home rule cities in N.D.C.C. § 40-05.1-06 to control their finances and fiscal affairs is broad enough to allow a city charter to impose a super majority voting requirement before a tax is imposed.² Furthermore, this office previously advised that requiring a super majority of the electorate is constitutionally valid. N.D.A.G. 93-L-147. That opinion considered whether N.D.C.C. § 57-15-14(2), which allowed school districts having a population of less than 4,000 to levy any specified number of mills upon approval of 55 percent of

² Even if this super majority approval requirement is added to the city’s home rule charter, it will still take only a majority of the electors to amend the new home rule charter provision, or to amend the home rule charter to approve a proposed tax. N.D.C.C. §§ 40-05.1-07, 40-05.1-04, 40-05.1-05.

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electors, was constitutional.³ Id. Our office advised that “voter approval provisions which require more than a simple majority do not violate principles of equal protection.” Id. (citing Gordon v. Lance, 403 U.S. 1 (1971) (upholding a requirement for a 60 percent vote before West Virginia political subdivisions could incur bonded indebtedness or raise taxes above a certain amount)). The Supreme Court explained in Gordon v. Lance that “any departure from strict majority rule gives disproportionate power to the minority. But there is nothing in the language of the Constitution, our history, or our cases that requires that a majority always prevail on every issue.” Id. at 6. See also 15 Eugene McQuillin, The Law of Municipal Corporations § 40.13 (3d ed. 1995) (same) (citing McGraw v. Exeter Region Co-op. School Distr., 765 A.2d 710 (N.H. 2001), holding the difference between a two-thirds and three-fifths majority necessary to approve a bond issue in different communities operating under different forms of government was not a denial of equal protection under the state constitution).

Given the requirement to construe the powers given to home rule cities liberally, it is my opinion that the proposed amendment to the Charter, requiring a 60 percent majority vote to increase certain taxes, if passed in conformity with state law, will be legally valid and binding on the city governing body and its citizens.⁴

Sincerely,

Wayne Stenehjem
Attorney General

tam/vkk

³ See N.D.C.C. § 40-39-07 for another example of a statutory requirement for a super majority (two-thirds) vote of a city governing body to vacate streets under certain circumstances. See also N.D.A.G. 97-L-132 (discussing that section relative to an alternative procedure.)

⁴ This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).