

**LETTER OPINION  
2006-L-27**

September 1, 2006

The Honorable Kim Koppelman  
State Representative  
513 1st Avenue NW  
West Fargo, ND 58078-1101

The Honorable Randy Boehning  
State Representative  
825 42nd Street SW Apt. 211  
Fargo, ND 58103-1143

Dear Representatives Koppelman and Boehning:

Thank you for your letter regarding the distribution of city sales tax revenue to a school district located within a home rule city in an effort to effect property tax relief. It is my opinion that a home rule city may enter into a joint powers agreement with a single school district to utilize city sales tax revenue for school funding even though more than one school district is located within the city, provided that the city home rule charter and implementing ordinances authorize the use of sales tax revenue for that purpose. It is my further opinion that the city itself could not properly grant property tax relief only for property located within the school district receiving sales tax revenue, but the school district receiving the revenue could effect property tax relief for the property located within the school district.

**ANALYSIS**

Your letter refers to N.D.A.G. 2005-L-30, in which the following opinions were articulated:

It is my opinion that a home rule city may enter into a joint powers agreement with a school district to utilize city sales tax revenue for school funding as long as the city home rule charter and implementing ordinances authorize the use of sales tax revenue for that purpose. It is my further opinion that a home rule city may establish exemptions from real estate taxes to be funded by sales tax revenues if it does so in connection with a permissible utility, business, or enterprise, or for the reasonable support of the poor under the authority of a state statute.

You express concern with a home rule city that has more than one school district located within the city and the degree to which the sales tax revenue must be equally distributed among those school districts and the degree to which any proposed property tax relief must be distributed. Specifically, your question is whether revenue from a city-wide sales tax may be distributed to only one of the school districts within the city and whether property tax relief could be effected only for property located within the school district receiving sales tax revenue.

This office has previously held<sup>1</sup> that a home rule city may enter into a joint powers agreement with a school district for the purpose of utilizing sales tax revenue for school funding.<sup>2</sup> “[O]nly one of the parties to the agreement needs to have the statutory authority to take the action that is the subject of the joint powers agreement.”<sup>3</sup> The fact that more than one school district is located within a city does not prohibit the city from entering into a joint powers agreement with just one of them, as the powers and jurisdiction of the city and the school districts as separate political subdivisions are independent of each other. Those independent powers are expressly granted to each type of political subdivision by the Legislature or necessarily implied from the powers expressly granted to them.<sup>4</sup>

The requirement of class uniformity in ad valorem taxation applies to the respective tax levies of the home rule city and the school district that are parties to the joint powers agreement because N.D. Const. art. X, § 5, mandates that “[t]axes shall be uniform upon the same class of property . . . within the territorial limits of the authority levying the tax.” In a letter opinion of this office issued September 2, 1999,<sup>5</sup> the following authority relating to taxation uniformity was noted:

The authority to classify property for tax assessment purposes rests with the Legislature. Signal Oil & Gas Co. v. Williams County, 206 N.W.2d 75 (N.D. 1973).

Section 176 [currently article X, section 5] of the North Dakota Constitution has been construed by this court as

---

<sup>1</sup> N.D.A.G. 2005-L-30; N.D.A.G. 2002-F-03; N.D.A.G. 2000-F-04.

<sup>2</sup> Such a transfer of city sales tax revenue to a school district may or may not result in the school district reducing the property tax mill levy within the district. While property tax relief might be one use of sales tax revenue, other uses might include funding school building renovation or construction or other lawful uses. See, e.g., N.D.A.G. 2002-F-03 and N.D.A.G. 2000-F-04.

<sup>3</sup> N.D.A.G. 2002-F-03, p. 2.

<sup>4</sup> Id.

<sup>5</sup> N.D.A.G. 99-L-75, p. 1.

granting to the Legislature discretion to classify various subjects, including property and persons, for tax purposes. Souris River Telephone Mutual Aid Corp. v. State, 162 N.W.2d 685 (N.D. 1968). This legislative authority and discretion is subject only to the limitation that such classification must not be arbitrary.

Id. at 81. In 1979 the North Dakota Supreme Court held that “all assessments of property in North Dakota for purposes of taxation must be uniform beginning with the 1981 property tax assessments, unless the Legislature provides for classification of property for purposes of assessment.” Soo Line R.R. Co. v. State, 286 N.W.2d 459, 468 (N.D. 1979) (on petition for rehearing).<sup>6</sup>

Consequently, if the home rule city itself intended to grant<sup>7</sup> property tax relief to reflect the use of the sales tax revenue by a reduction in its mill levy, it would have to extend that relief upon the same class of property throughout its taxing limits. Likewise, if the school district that benefited from the city sales tax revenue intended to effect property tax relief by a reduction in its mill levy, it would have to extend that relief upon the same class of property throughout the school district. This may ultimately result in a benefit for these property owners that is unavailable to city property owners whose property is located in another school district that did not enter into a joint powers agreement with the city.

Sincerely,

Wayne Stenehjem  
Attorney General

rww/pg

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.<sup>8</sup>

---

<sup>6</sup> Id.

<sup>7</sup> See N.D.A.G. 2005-L-30 and N.D.A.G. 93-L-292.

<sup>8</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).