

N.D.A.G. Letter to Dalstad (Jan. 16, 1991)

January 16, 1991

Mr. Kenneth I. Dalsted
Jamestown City Attorney
P.O. Box 1727
Jamestown ND 58402-1727

Dear Mr. Dalsted:

Thank you for your December 20, 1990, letter wherein you ask for my opinion regarding the authority of the City of Jamestown to enact a city sales tax under its home rule charter.

You state in your letter that the City of Jamestown adopted a Home Rule Charter on March 7, 1978, which among other things, essentially adopted provisions of N.D.C.C. § 40-05.1-06(2) in Article 3(b) of the Charter. This provision provides:

40-05.1-06. Powers. From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

....

2. 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 all real and personal property in order to be subject to the assessment provisions of this subsection shall be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments.

(Emphasis added.)

However, the City of Jamestown has not amended its charter to essentially adopt the provisions adopted by a 1983 amendment, effective July 1, 1984, to N.D.C.C. § 40-05.1-06, which provides:

16. To impose registration fees on motor vehicles, or sales and use taxes in addition to any other taxes imposed by law.

1983 N.D. Sess. L. ch. 428, § 2.

These provisions were considered by my predecessor Attorney General Robert O. Wefald in a March 7, 1984 letter to Grand Forks City Attorney Jay H. Fiedler. See enclosed copy. Attorney General Wefald concluded:

It is my opinion that [t]he city of Grand Forks, along with all other home rule cities, must include in its home rule charter and implement through its ordinances the power to impose a municipal sales tax in order to take advantage of the grant of authority given to home rule cities by Section 40-05.1-06(16), N.D.C.C., which takes effect on July 1, 1984. Since Chapter 40-05, N.D.C.C., does not authorize cities to impose municipal sales taxes, such action could not then be taken by a home rule city which fails to include such authority in its charter and to implement such authority through an ordinance.

This conclusion was based upon the following principle expressed by the North Dakota supreme court in Litten v. City of Fargo, 294 N.W.2d 628, 632 (N.D. 1980):

It therefore follows that if the powers are not stated in the charter, or if they are stated in the charter but are not implemented by ordinance, the home rule city may not avail itself of the powers enumerated in 40-05.1-06, N.D.C.C., but would be governed by the statutes applicable generally to all cities.

Also see McCallum v. City Comm'rs, 393 N.W.2d 263 (N.D. 1986).

Based upon the reasoning in Attorney General Wefald's letter and my believe that the underscored language quoted above from N.D.C.C. § 40-05.1-06(2) relates to the levy and collection of ad valorem taxes, it is my opinion that the City of Jamestown may not enact a sales tax until it amends it charter to essentially adopt the language of N.D.C.C. § 40-05.1-06(16) and implements that language through the adoption of appropriate ordinances.

Sincerely,

Nicholas J. Spaeth

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