

LETTER OPINION
94-L-20

January 20, 1994

Mr. Kent Reiersen
Williston City Attorney
P.O. Box 1366
Williston, ND 58802-1366

Dear Mr. Reiersen:

Thank you for your December 27, 1993, letter concerning a petition for a proposed Sunday opening ordinance. You stated that the city commission had passed a Sunday opening ordinance which was then referred. The referral vote on November 23, 1993, rejected the ordinance. You further indicated that petitions were then circulated to initiate a Sunday opening ordinance substantially similar to the one initially passed, and that the petitions were presented and certified with signatures of less than 25%, but more than the minimum percentage required, of the qualified electors.

Williston is a home rule city; however, its home rule charter and ordinances do not authorize the city governing body to proceed in a manner different from that provided in N.D.C.C. ch. 40-12. See N.D.C.C. ? 40-05.1-06. Thus, the analysis in this opinion will be based on the provisions in N.D.C.C. ch. 40-12 on initiative and referendum.

You first asked whether the city commission was required by N.D.C.C. ? 40-12-06 to pass the proposed ordinance after it received the petition. N.D.C.C. ? 40-12-06 provides as follows:

40-12-06. Duty of governing body after receiving petition for proposed ordinance. After receiving the petition for the initiation of a proposed ordinance, the governing body of the municipality shall:

1. Pass the ordinance without alteration within twenty days after the attachment of the auditor's certificate to the accompanying petition;

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2. Call a special election, unless a general city election is fixed within ninety days thereafter, and submit to the vote of the qualified electors of the municipality the initiated ordinance without alteration; or

3. If the petition is signed by not less than twenty-five percent of the qualified electors as defined in section 40-12-02, pass the ordinance without change within twenty days after the filing of the petition or submit the initiated ordinance at the next general municipal election, if the election occurs not more than thirty days after the city auditor's certificate of sufficiency is attached to the petition, and if no general municipal election is to be held within thirty days after the city auditor's certificate of sufficiency is attached to the petition, it shall call a special election.

In the present instance, the options available to the city commission are set out in N.D.C.C. ? 40-12-06(1) and (2). Subsection 3 is not applicable in this situation because the petition was signed by less than 25% of the qualified electors.

As indicated by our Supreme Court in Christianson v. City of Bismarck, 476 N.W.2d 688, 691 (N.D. 1991), "section 40-12-06, NDCC, limits the options of the city when it receives . . . a proposed ordinance to either pass the ordinance or submit it to a vote of the electorate." Likewise, a previous letter opinion issued by this office stated "after the city . . . receives the petition which has been determined by the city auditor to be sufficient, the municipality must either pass the ordinance without change or call a special election or submit it to a vote at the next general election." Letter from Assistant Attorney General DeNae H. M. Kautzmann to Brian D. Neugebauer, West Fargo assistant city attorney (February 14, 1984).

Consequently, it is my opinion that the city commission is not required to pass the proposed ordinance; rather, it may decide either to pass the ordinance without alteration as set forth in N.D.C.C.

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? 40-12-06(1), or to call a special election as set forth in N.D.C.C. ? 40-12-06(2).

You also asked about the effect of the prohibition in N.D.C.C. ? 40-12-10 against holding more than one special election in any six-month period. N.D.C.C. ? 40-12-10 provides as follows:

40-12-10. No limitation on number of ordinances that may be voted on at one election -- Limitation on special elections. Any number of proposed or referred ordinances may be voted on at the same election in accordance with the provisions of this chapter. There shall be not more than one special election in any period of six months for such purposes.

(Emphasis supplied.) This statute provides that not more than one special election for the purpose of voting on proposed or referred ordinances may be held within any six-month period. In contrast, N.D.C.C. ? 40-12-06(2) requires the city commission, when it does not pass the proposed ordinance without alteration, to "[c]all a special election, unless a general city election is fixed within ninety days thereafter, and submit to the vote of the qualified electors of the municipality the initiated ordinance without alteration." This statute requires the city commission to call a special election within 90 days, unless a general city election will be held within that time period. See Christianson v. City of Bismarck, 476 N.W.2d at 691 n.5. Under the facts submitted, N.D.C.C. ? 40-12-06(2) would require the election on the initiated ordinance to be held before the end of the six-month period following the last special election on the referred ordinance, which is prohibited by N.D.C.C. ? 40-12-10.

A similar issue was addressed in a previous letter opinion issued by this office. See Letter from Assistant Attorney General Robert P. Brady to John H. MacMaster, Williston city attorney (October 24, 1977) (copy enclosed). That letter addressed the conflict between subsection 3 of N.D.C.C. ? 40-12-06 and N.D.C.C. ? 40-12-10 and noted that "[w]e do not believe that the provisions of subsection 3 of Section 40-12-06 supersede those of Section 40-12-10 so as to result in a situation whereby a special city election must be called each and every time a petition for

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initiating or referring a municipal ordinance is submitted. The two statutes were enacted together." Id.

When two or more conflicting statutes . . . relate to the same subject matter in general, every effort should be made to give meaningful effect to each without rendering one or the other useless. . . . Statutes . . . are to be construed in a way which does not render them useless, and because the law neither does nor requires idle acts we will not assume that any statute . . . was intended to be useless rhetoric.

Keyes v. Amundson, 343 N.W.2d 78, 83 (N.D. 1983).

It is my opinion that N.D.C.C. ?? 40-12-06(2) and 40-12-10 should be construed together to give effect to each. Thus, if a petition is submitted within six months of a special election and no general election will be held within ninety days of submission, and if the ordinance is not passed by the governing body pursuant to N.D.C.C. ? 40-12-06(1), the petition should be returned to the submitters. The petition may then be resubmitted at the appropriate time, i.e., within ninety days preceding a general election, or at a time that would allow a special election to be called within ninety days without violating the six-month prohibition (at the earliest, after three months of the six-month period has passed.)

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jjf/pg
Enclosure