

LETTER OPINION
95-L-115

May 17, 1995

Senator Carolyn Nelson
1125 College Street
Fargo, ND 58102-3433

Dear Senator Nelson:

Thank you for your May 4, 1995, letter regarding a proposed amendment to the home rule charter for the City of Fargo (City).

Under the proposed amendment, the City's home rule charter would authorize a sales tax for construction, maintenance, and operation of certain recreational facilities and other improvements listed in the amendment. Both the City and the park district of the City of Fargo (Park District) own some of the real property on which these improvements would be built.

An "Approved Authority" would apparently manage the proceeds of the tax and the proposed improvements. You ask whether the Park District may serve as the "Approved Authority." I conclude that the Park District may accept this responsibility, but is not required to do so.

A home rule city and its citizens can assume broad control over their finances and fiscal affairs, including the power to levy city sales taxes. See N.D.C.C. ? 40-05.1-06(2) and (16).

These powers must be authorized by a home rule charter and implemented through city ordinances. N.D.C.C. ? 40-05.1-06; Litten v. City of Fargo, 294 N.W.2d 628, 632 (N.D. 1980); Letter from Attorney General Robert Wefald to Jay Fiedler (March 7, 1984). The power to levy sales taxes under N.D.C.C. ? 40-05.1-06(16) is not limited in purpose, but may be used simply to raise general revenue for the city. Thus, if a home rule charter can authorize a sales tax for unidentified general purposes, I see no reason why it could not authorize a sales tax for specific public projects.

Once a sales tax is authorized and levied for a particular purpose, the question becomes whether the proceeds of the tax can be used for that purpose. Specifically, you ask whether the Park District can use the proceeds of a sales tax levied

by the City to construct and manage certain recreational facilities and improvements. It appears from the attachments to your letter that the Park District was established by the City under N.D.C.C. ch. 40-49. By establishing the Park District under this chapter, the City relinquished to the Park District the "sole and exclusive authority to maintain, govern, and improve the land, and to provide for the erection of structures thereon." N.D.C.C. ? 40-49-12(1); see also City of Fargo v. Geary, 156 N.W. 552 (N.D. 1916). In other words, the Park District, rather than the City, controls all improvements to park property as defined in N.D.C.C. ? 40-49-04. See Letter from Attorney General Nicholas Spaeth to Mark A. Tebelius (July 8, 1985). Thus, the City does not have the authority to construct or manage improvements on park property, or require the Park District to build and assume responsibility for those improvements as the "Approved Authority."

However, the Park District may agree to cooperatively exercise its powers under N.D.C.C. ch. 40-49 and accept financing from the City for construction and management of improvements on property otherwise subject to the Park District's exclusive authority. Any two or more political subdivisions of this state may enter into an agreement "for the cooperative or joint administration of any power or function that is authorized by law or assigned to one or more of them." N.D.C.C. ? 54-40.3-01(1). Only one of the parties to a joint powers agreement needs to independently possess the powers that will be administered under such an agreement. Letter from Attorney General Heidi Heitkamp to Doug Mattson (October 6, 1994). This statute authorizes a joint powers agreement between a city and a city park district for the use of city funds to maintain and improve properties under the exclusive authority of the park district. Letter from Attorney General Nicholas Spaeth to Marshall Moore (April 21, 1987), letter from Assistant Attorney General VandeWalle to Ronald Schwartz (April 24, 1973).

In summary, the City can be authorized by its home rule charter to levy an additional sales tax for construction and maintenance of recreational facilities. However, the proceeds of the tax may be used for those purposes only if the Park District agrees to cooperatively exercise its exclusive authority over city parks with the City. Thus, while it cannot be required to accept the appointment, the Park District can agree to act as the "Approved Authority" responsible for the construction and management of these improvements.

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Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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