



STATE OF NORTH DAKOTA  
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**Drew H. Wrigley**  
ATTORNEY GENERAL

**LETTER OPINION**  
**2024-L-06**

The Honorable Jim Kasper  
State Representative  
District 46  
1128 Westrac Drive  
Fargo, ND 58103-8729

Dear Representative Kasper:

Thank you for your letter asking several questions about a home rule city's authority to implement election procedures for local elections. You ask whether the City of Fargo's Home Rule Charter and implementing ordinance outlining its approval voting election procedure supersede the election procedures found in North Dakota Century Code (N.D.C.C.) title 16.1, specifically the provisions of N.D.C.C. § 16.1-06-04 concerning the form and quality of ballots. It is my opinion, the Legislature expressly granted home rule cities the authority to provide for "all matters pertaining to city elections, except as to qualifications of electors."<sup>1</sup> This broad power encompasses a home rule city's authority to prescribe the manner of electing its officials under its home rule charter. Because the City of Fargo has included the power in its Home Rule Charter and properly implemented the power through an ordinance, the City of Fargo's Home Rule Charter and the ordinance implementing its city election procedures supersede any conflicting provisions of N.D.C.C. title 16.1, including N.D.C.C. § 16.1-06-04 concerning the form and quality of ballots.<sup>2</sup>

**ANALYSIS**

"The Legislature has provided by law for the establishment and exercise of home rule in cities."<sup>3</sup> The intention of the home rule chapter is to provide the people of home rule cities "the full right of self-government in both local and city matters within the powers enumerated" in the home rule charter.<sup>4</sup> If included in its home rule charter and implemented through ordinances, a home rule city may exercise the powers listed in N.D.C.C. § 40-05.1-06.<sup>5</sup> "A validly enacted 'home rule charter and the

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<sup>1</sup> N.D.C.C. § 40-05.1-06(9).

<sup>2</sup> However, the home rule charter and ordinance would not supersede a state law providing for the qualification of electors.

<sup>3</sup> N.D.A.G. 2008-L-02, citing N.D. Const. art. VII, § 6 and N.D.C.C. ch. 40-05.1.

<sup>4</sup> N.D.C.C. § 40-05.1-06.

<sup>5</sup> *Id.*

ordinances made pursuant to the charter in such matters supersede within the territorial limits and other jurisdiction of the city any law of the state in conflict with the charter and ordinances and must be liberally construed for such purposes.”<sup>6</sup> “[T]he legislature intended the cities to exercise broad plenary powers in those items specified under § 40-05.1-06, except where specifically provided that these powers may be exercised only by conforming or complying with state law.”<sup>7 8</sup>

The Legislature expressly granted home rule cities the authority to “provide for all matters pertaining to city elections, except as to qualifications of electors.”<sup>9</sup> This office has previously indicated the power to provide for “‘all matters pertaining to city elections’ is very broad.”<sup>10</sup> Accordingly, the Legislature has granted a home rule city the power to make decisions regarding the manner of electing its officials.

The City of Fargo has adopted a home rule charter delineating powers essentially identical to those in N.D.C.C. § 40-05.1-06. Specifically, the Charter states that the City of Fargo has the power “[t]o provide for all matters pertaining to city elections, except as to qualifications of electors.”<sup>11</sup> On November 6, 2018, the electors of the City of Fargo approved a petition to amend the City’s Home Rule Charter pertaining to the procedure for electing city officials. The voters of Fargo sought to implement a different voting system called approval voting, which allows each elector to vote for all the candidates the elector approves of in each race instead of choosing just one.<sup>12</sup> The “[c]andidates receiving the most votes will be elected until all necessary seats are filled in each race.”<sup>13</sup> The City of Fargo subsequently enacted Ordinance No. 5191 to implement the approval voting procedures outlined in Article 11 of the Home Rule Charter.<sup>14</sup>

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<sup>6</sup> *Sauby v. City of Fargo*, 2008 ND 65 ¶ 5, 747 N.W.2d 65, quoting N.D.C.C. § 40-05.1-05.

<sup>7</sup> *Klug v. City of Minot*, 2011 ND 67 ¶ 8, 795 N.W.2d 906, quoting *Litten v. City of Fargo*, 294 N.W.2d 628, 632 (N.D. 1980).

<sup>8</sup> It is noted that the North Dakota Supreme Court currently has a case under review which may result in a modified standard of review for determining whether an implementing ordinance of a home rule charter city supersedes a state law and adding an element which would consider if the implementing ordinance concerns a matter of only local, rather than statewide, importance. *See City of Fargo v. State*, Case No. 20240125 (N.D. argued Sept. 25, 2024).

<sup>9</sup> N.D.C.C. § 40-05.1-06(9).

<sup>10</sup> Letter from Heidi Heitkamp, Att’y Gen., Off. of Att’y Gen., to Kim Schale, Harvey City Auditor (Dec. 20, 1999); *see also* N.D.A.G. 2003-L-43 (stating N.D.C.C. § 40-05.1-06 provides home rule cities with “broad powers” including the power “[t]o provide for all matters pertaining to city elections”).

<sup>11</sup> City of Fargo Home Rule Charter art. 3(F).

<sup>12</sup> City of Fargo Home Rule Charter art. 11(A).

<sup>13</sup> *Id.*

<sup>14</sup> Fargo, N.D., Ordinance No. 5191; Fargo, N.D., Mun. Code § 2-0205.

The City of Fargo has properly implemented its approval voting procedures through an ordinance.<sup>15</sup> Thus, the last issue remaining is whether the Legislature has indicated that the only manner of exercising these powers is by mirroring state law, specifically the provisions of N.D.C.C. § 16.1-06-04 concerning the form and quality of ballots.

Section 16.1-06-04, N.D.C.C., sets forth numerous requirements for official ballots, including that the ballot “must contain the names of all candidates,”<sup>16</sup> however, the text of the law does not expressly prohibit a city from enacting ordinances which adopt conflicting requirements.<sup>17</sup> Indeed, during the 2023 Legislative Session, the 68th Legislative Assembly passed House Bill 1273, which would have done just that: clearly prohibit political subdivisions, including home rule charter cities, from adopting ordinances providing for approval or rank-choice voting in all elections, including local elections, held within the state.<sup>18</sup> Governor Doug Burgum vetoed that bill.<sup>19</sup> The North Dakota House of Representatives voted to override the Governor’s veto, but the State Senate voted to sustain the veto.<sup>20</sup> North Dakota law, therefore, continues to exclude any language prohibiting home rule charter cities from adopting ordinances related to approval voting procedures or the format of ballots related to city elected officials.

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<sup>15</sup> City of Fargo Home Rule Charter art. 3(F); City of Fargo City Ord. No. 5191; City of Fargo Mun. Code § 2-0205.

<sup>16</sup> N.D.C.C. § 16.1-06-04(2).

<sup>17</sup> Where the Legislature intends to explicitly prohibit a home rule charter city from adopting an ordinance which would conflict with a state law otherwise falling within the powers enumerated at N.D.C.C. § 40-05.1-06, the statutory language is clear. *See, e.g.*, N.D.C.C. § 4.1-33-04 (“A political subdivision, including a home rule city or county, may not adopt or continue in effect any ordinance, resolution, or home rule charter provision regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides.”); N.D.C.C. § 12.1-01-05 (“Except as provided in section 40-05-06, an offense defined in this title or elsewhere by law may not be superseded by any city or county ordinance, or city or county home rule charter . . .”); N.D.C.C. § 18-13-10 (“Notwithstanding any other provision of law, home rule charter, or ordinance made under a home rule charter, a political subdivision may not enact or enforce any ordinance or regulation conflicting with any provision of this chapter or with any policy of this state expressed by this chapter.”); N.D.C.C. § 42-01-01.1 (“Notwithstanding any other provision of law, a county or city enacting a home rule charter under chapter 11-09.1, 40-05.1, or 54-40.4 may not regulate a sport shooting range except as otherwise provided in this section.”); N.D.C.C. § 44-04-17.1(11) (“‘Political subdivision’ includes any county or city, regardless of the adoption of any home rule charter, . . .”); N.D.C.C. § 57-34.1-03 (“Notwithstanding any other provision of law or any ordinance or resolution of a political subdivision, including a political subdivision operating under a home rule charter, mobile telecommunications services provided in a taxing jurisdiction to a customer, . . . are deemed to be provided by the customer’s home service provider.”).

<sup>18</sup> H.B. 1273, 2023 N.D. Leg.

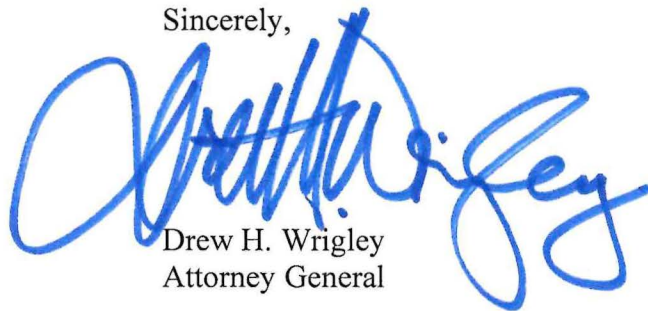
<sup>19</sup> H. Journal 68-1641, Reg. Sess., at 1660-1661 (N.D. 2023).

<sup>20</sup> H. Journal 68-1765, Reg. Sess., at 1765 (N.D. 2023); S. Journal 68-1717, Reg. Sess., at 1721-1722 (N.D. 2023).

Thus, the City of Fargo, a home rule city, which has included the power in its home rule charter and properly implemented the power through an ordinance, has the authority to prescribe the manner of electing its officials under its home rule charter, including the format of the ballot.

Because the City of Fargo is a home rule city which validly adopted an approval voting procedure through its appropriately adopted and enacted home rule charter powers and implementing ordinance, it is my opinion that the City of Fargo's approval voting ordinance supersedes conflicting state laws related to the procedure for the election of city officials, including N.D.C.C. § 16.1-06-04 concerning the form and quality of ballots.

Sincerely,

A handwritten signature in blue ink, appearing to read "Drew H. Wrigley", is written over the typed name and title.

Drew H. Wrigley  
Attorney General

AMH/AMR

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>21</sup>

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