

NORTH DAKOTA

CONSTITUTIONAL AND STATUTORY PROVISIONS

North Dakota Constitution

- Art. VII. §2.

The legislative assembly shall provide by law for the establishment and the government of all political subdivisions. Each political subdivision shall have and exercise such powers as provided by law.

- Art. VII, § 6.

The legislative assembly shall provide by law for the establishment and exercise of home rule in counties and cities. No home rule charter shall become operative in any county or city until submitted to the electors thereof and approved by a majority of those voting thereon. In granting home rule powers to cities, the legislative assembly shall not be restricted by city debt limitations contained in this constitution.

North Dakota Statutes

- N.D. CENT. CODE § 40-05.1-00.1 (2017) Enabling Clause.

Any city may frame, adopt, amend, or repeal home rule charters as provided in this chapter.

- *Id.* § 40-05.1-05 Ratification by majority vote - Supersession of existing charter and state laws in conflict therewith - Filing of copies of new charter.

If a majority of the qualified voters voting on the charter at the election vote in favor of the home rule charter, the charter is ratified and is the organic law of the city, and extends to all its local and city matters. The charter and the 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. . . .

- *Id.* § 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. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the city at the same rate unless otherwise provided by law. The authority to levy taxes under this subsection does not include authority to impose income taxes

4. To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation. To provide for change, selection, or creation of its form and structure of government, including its governing body, executive officer, and city officers

7. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof

It is the intention of this chapter to grant and confirm to the people of all cities coming within its provisions the full right of self-government in both local and city matters within the powers enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall continue to apply to home rule cities, except insofar as superseded by the charters of such cities or by ordinance passed pursuant to such charters.

- *Id.* § 54-40.4-01 County-city home rule - City participation.

One or more counties and one or more cities within each county may frame and adopt a home rule charter to form a single unit of local government pursuant to this chapter. A county-city home rule charter may include a city that participates in proposing the charter if a majority of the qualified electors of the city voting on the question approve the proposed charter.

HOME RULE STRUCTURE

The North Dakota constitution does not by itself create home rule, although it calls upon the state legislature to do so. Pursuant to this directive, the legislature adopted a detailed set of provisions laying out the powers of cities and counties. As demonstrated above, the grant of authority to cities includes the authority to initiate ordinances in the regulatory, fiscal, personnel, and structural realms, albeit subject to some limitations, such as the prohibition on municipal income taxes.

STATUTORY IMMUNITY FROM STATE PREEMPTION

The home-rule statute provides that the charter and ordinances made pursuant to the charter supersede “any law of the state in conflict,” at least when such municipal enactments deal with

local or city matters.¹ The North Dakota Supreme Court has read the supersession provision as applying to the powers laid out in N.D. CENT. CODE § 40-05.1-06 so long as such powers were included in the city's charter and adopted by ordinance.² Although this would appear to provide a broad amount of statutory immunity, given the scope of the powers in § 40-05.1-06, the North Dakota Supreme Court has described it as of "limited and qualified application."³

Under this framework, the state supreme court has upheld a city's decision to merge police and city employee pension funds despite arguably conflicting state law.⁴ Moreover, the North Dakota Attorney General opined that the home-rule city of Grand Forks could change the composition of its library board in a manner that conflicted with state law because the composition of such boards is a matter of local rather than statewide concern.⁵

Because the immunity cities enjoy is rooted only in statute, however, the legislature may overcome this presumption with sufficient clarity in passing a preemptive statute.⁶

¹ N.D. CENT. CODE § 40-05.1-05 (2017).

² *Litten v. City of Fargo*, 294 N.W.2d 628, 632 (N.D. 1980).

³ *Id.* at 631.

⁴ *Klug v. City of Minot*, 795 N.W.2d 906 (N.D. 2011).

⁵ 2011 N.D. Op. Atty. Gen. No. L-03, 2011 WL 916177.

⁶ *E.g.*, *Sauby v. City of Fargo*, 747 N.W.2d 65, 68 (N.D. 2008) (noting that "a home rule city's power to enact ordinances that supersede state law is not without limitation, because a home rule city's powers must be based upon statutory provisions") (invalidating local traffic offense ordinance because state had made clear in statute that supersession provision did not apply).