

N.D.A.G. Letter to Tebelius (July 12, 1990)

July 12, 1990

Mr. Mark A. Tebelius
Harvey City Attorney
1012 Lincoln Avenue
Harvey, ND 58341-1595

Dear Mr. Tebelius:

Thank you for your July 3, 1990, letter concerning the ability of the city to enact by ordinance a preference in awarding contracts for city residents.

A city, as a political subdivision possesses and exercises only those powers provided to it by law. N.D. Const. art. VII, § 2. A city is an agency and creature of the state and has no powers except those provided to it by the Legislature. Fetzer v. Minot Park District, 138 N.W.2d 601 (N.D. 1965); Dakota Land Co. v. City of Fargo, 224 N.W.2d 810 (N.D. 1974).

I have examined and reviewed the statutes describing the powers and authorities of a non-home rule city. I can find no statutory authority provided to a city to give a preference for city residents similar to that provided for by N.D.C.C. § 44-08-01 for North Dakota residents. For example, N.D.C.C. § 40-22-29 requires the governing body to award a special assessment project contract to the "lowest responsible bidder" and N.D.C.C. § 40-05-01(52) provides that the governing body has the power to provide that contracts for supplies must be awarded to the "lowest responsible bidder." No provision is made concerning preferences for city resident bidders.

In the absence of legislative authority provided to a city to enact an ordinance giving a contractual preference to city residents, I believe the city does not enjoy such authority.

Sincerely,

Nicholas J. Spaeth

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