

**N.D.A.G. Letter to Larson (Sep. 27, 1990)**

September 27, 1990

Representative Rod Larson  
District 13  
36 Park Drive  
West Fargo, ND 58078

Dear Representative Larson:

Thank you for your September 12, 1990, letter asking whether a city lodging tax may be imposed and collected by a city if the city has not specifically designated a purpose for which the proceeds may be used. For the following reasons it is my opinion that a city lodging tax may be imposed and collected by a city if the city has not specifically designated a purpose for which the proceeds may be used.

The city lodging tax which is codified as N.D.C.C. ch. 40-57.3 was enacted by the 1981 Legislative Assembly and subsequently amended by the 1987 Legislative Assembly. 1981 N.D. Sess. Laws ch. 429; 1987 N.D. Sess. Laws ch. 504.

This legislation authorized a city to impose a city lodging tax not exceeding two percent of the rental charge. The receipts from this tax must be deposited in the "city visitors' promotion fund" and can be spent only as provided by law. N.D.C.C. § 40-57.3-01. "The moneys in the visitors' promotion fund must be used generally to promote, encourage, and attract visitors to come to the city and use the travel and tourism facilities within the city." N.D.C.C. § 40-57.3-02.

N.D. Const. art. X, § 3 provides, in pertinent part, as follows:

SECTION 3. No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

In Boeing Co. v. Omdahl, 169 N.W.2d 696 (N.D. 1969) the issue was raised whether the State's sales and use taxes violated this provision of the Constitution because the law only provided that these taxes are to be deposited in the state general fund, subject to subsequent appropriations. In holding that N.D. Const. art. X, § 3 was not violated, the North Dakota Supreme Court said:

The moneys from the general fund are used for many purposes and it has been held by other courts that the allocation of the proceeds of a state tax to the general fund is adequate to satisfy the constitutional provisions calling for a stating of the object of the tax.

(Citations omitted.) Id. at 711.

Similarly, the Legislative Assembly satisfied the constitutional requirements when it enacted the city lodging tax because it directed how the revenue must be used. Within those constraints, a city is free to develop its spending programs during its budget process.

Sincerely,

Nicholas J. Spaeth

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