

**LETTER OPINION**  
**97-L-105**

July 3, 1997

Mr. Fabian E. Noack  
Carrington City Attorney  
P.O. Box 15  
Carrington, ND 58421-0015

Dear Mr. Noack:

Thank you for your letter asking two questions regarding whether the voters in the city of Carrington can require a referendum on the city council's determination to construct a new city hall.

You first ask whether the city council's determination to build a new city hall can be referred by petition of the voters under the city's Home Rule Charter. The governing body of a city has the power "[t]o enact or adopt all such ordinances, resolutions, and regulations, not repugnant to the constitution and the laws of this state, as may be proper and necessary to carry into effect the powers granted to such municipality or as the general welfare of the municipality may require . . . ." N.D.C.C. § 40-05-01(1) (emphasis added). The city of Carrington's Home Rule Charter provides:

Article IV - Referendum and Initiative

1. The voters of the City of Carrington shall have the power to refer and initiate ordinances and resolutions, except that the power of initiative and referendum shall not extend to the annual appropriations ordinance, or any limitation as to the annual mill levy, nor to those ordinances or resolutions implementing public projects upon which an election has previously been held, or which provide for meeting obligations of bonded indebtedness incurred by a prior ordinance or a prior election or referendum, nor shall the power of initiative and referendum extend to special improvement projects under which law provides for protest procedures or to special assessment projects carried out under the provisions of the North Dakota Century Code.

. . . .

3. Referendum petitions must be signed by qualified voters of the city equal to at least thirty-three

(33%) percent of the total votes cast in the city at the most recent Presidential election.

4. Each petition, whether for initiating or referring an ordinance or resolutions, shall contain or have attached thereto throughout their circulation the full text of the ordinance or resolution proposed or referred. . . .
5. . . . Referendum petitions for resolutions must be filed with the City Auditor within thirty (30) days after the passage of the resolution referred.
6. The City Auditor shall pass upon the sufficiency of each petition and shall have twenty (20) days after the petition is filed to certify as to its sufficiency. . . .
7. Upon the filing of a referendum petition, the ordinance or resolution referred, except emergency ordinances or resolutions, as hereafter defined, shall be suspended. . . .  
An emergency ordinance or resolution is an ordinance or resolution thus designated by the governing body and passed by three-fourths (3/4) vote of such body.

. . . .

9. Upon final determination of the sufficiency of the petition of referendum, the city governing body shall cause an election on the referral to be held no later than the next regular general election. . . .

City of Carrington Home Rule Charter, Article IV (emphasis added). Thus, it is my opinion that, unless any of the exceptions in paragraph 1 of Article IV of the Carrington Home Rule Charter apply, the voters have the power to refer a resolution regarding the construction of a new city hall.

Your second question is whether the fact that the 1997 budget approved by the Carrington city council, including a line item appropriation to pay for the construction of a new city hall, changes the answer to the first question. The city's home rule charter provides that "the power of . . . referendum shall not extend to the annual appropriations ordinance . . . ." City of Carrington Home Rule Charter, Article IV, paragraph 1. Simply planning for and approving an expenditure through the city budgeting process does not limit the power given to voters via the Carrington Home Rule Charter to refer resolutions of the city governing body. Referral of a resolution of the city governing body regarding the construction of a new city hall is not a "referendum . . . extend[ing] to the annual

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appropriations ordinance . . . ." Thus, it is my opinion that even though the 1997 budget approved by the city council includes a line item appropriation to pay for the construction of a new city hall, the city voters still have the power to refer a resolution regarding the construction of a new city hall, unless any of the other exceptions in paragraph 1 of Article IV of the city home rule charter applies.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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