

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2392

2007 SENATE POLITICAL SUBDIVISIONS

SB 2392

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2392

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 2, 2007

Recorder Job Number: 2709

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the committee to order. All members (5) present.

Chairman Cook opened the hearing on SB 2392 relating to the imposition of fees by home rule cities for certain vehicle and traffic violations.

Senator Fiebiger, District 45, introduced SB 2392. He was asked to bring this bill to you by the City of Fargo.

Keith Ternes, Police Chief for City of Fargo, ND testified in support of SB 2392. Early last year the City of Fargo considered and then did eventually raise the traffic fines for traffic violations within the city. We did so for a number of reasons. First, traffic violations in Fargo are a primary complaint that we get from the residence with in the city. In order to address and try to mitigate some of those traffic concerns, we analyzed whether it was necessary for us to raise our traffic fines. The first thing we did was look at other communities similar in size to see what their traffic fines were. Even the city of Grand Forks had traffic fines for some traffic violations that were higher than Fargo's. Fargo's were significantly lower. We wanted our fines comparable to other cities our size. The other reason why we considered raising our fines was because we also recognize that traffic problems in the City of Fargo are certainly going to be different than they may be in Casselton, ND. Just the sheer volume of traffic in

the city of Fargo and the number of traffic violations that are occurring along with the number of traffic crashes that occur in the City of Fargo, clearly demonstrate that the traffic issues and traffic problems are different in Fargo than in some of the smaller communities. Just to give you an example in the city of Fargo we average about four thousand traffic crashes every year. There is a real cost associated with the city having to spend resources and having police officers, fire fighters, street department personnel and whatever it takes to respond to these traffic crashes. Fargo is not the only city in the state who has traffic fines that are higher than those imposed by the state statute. I feel as a police chief that it is certainly important to do two things, try and mitigate some of the traffic violations that occur within the city. One is to establish a sense for drivers that if you do commit a traffic violation the chances of you getting a traffic citation are very good. There has to be that component. The other thing that has to be associated with that, is that when you do receive a traffic citation you have to be somewhat deterred by the fine associated with that. This bill clarifies some language that will allow home rule cities to impose the traffic fines or fees for any things that they felt that were appropriate.

Erik Johnson, City Attorney, Fargo, ND testified in support of SB 2392. The proposed bill is intended to clarify what the attorney general back in 1982 thought was the law and what municipal judges and district court judges have interpreted as the law across the state. There is a provision in the municipal code, 40-05 that deals with the powers of cities. 40-05.1 is the chapter that gives home rule cities some additional powers. In 1969 the legislature created the authority for cities to have home rule powers and many cities such as Fargo have adopted those home rule powers. There is an exception in the chapter dealing with cities in terms of their traffic fines that says that cities can pass ordinances that create violations for traffic and can set the fines for those traffic violations but they can not exceed the state limits. Home rule

cities are not governed by that limitation of the state cap but the proposed bill would clarify that fact. He passed out some proposed amendments (See attachment #1)

Bill Wocken, City Administrator for City of Bismarck, testified in favor of SB 2392. The bill seeks to codify an attorney general's opinion to allow cities to utilize home rule authority to customize traffic fines. We believe that in Bismarck it is necessary to adjust some of the fines set by state law to take care of some of the local traffic concerns. We have used the authority that we believed we already had successfully. The effect of SB 2392 is to go back and say yes that is what the authority of cities is and we have utilized that successfully.

Chairman Cook asked Keith Magnuson to answer a question. Where do speeding violations, stop sign violations and fines imposed by the state go?

Keith Magnuson, Deputy Director for Driver Vehicle Services, Department of Transportation, answer that they really are not fines. They are non criminal traffic violation fees and they go to the common schools trust fund. The ones that municipalities levy stay with the cities.

Connie Sprynczynatyk, North Dakota League of Cities, feels that this is one issue that the community needs to take hold of.

No further testimony in favor, opposed or neutral.

Chairman Cook closed the hearing on SB 2392.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2392**

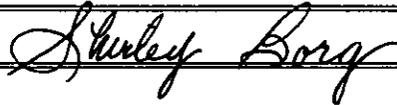
Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **February 8, 2007** (Committee work)

Recorder Job Number: **3204**

Committee Clerk Signature



Minutes:

Chairman Cook called the committee to order. All members (5) present.

Chairman Cook reviewed SB 2392 giving Home Rule Cities the ability to charge traffic fines greater than the state statute.

Senator Anderson moved Do Pass.

Senator Warner seconded the motion.

Discussion:

Senator Anderson: I liked the testimony on that there are different situations in different cities. Most of the testimony we received was from our largest city. I agree there are situations there where additional fines are necessary.

Senator Hacker: There was an amendment that was proposed. I don't think this would change the bill for him. I have heard that there are those that believe that fines would detract people from breaking the law and many believe that those that are going to break the law are going to break the law and that imposing different amounts of money doesn't mean it will lower the amount of traffic violations.

Chairman Cook asked how high these cities would levy their fines if they did not get to keep the money.

Senator Olafson: Apparently they get to keep the money.

Senator Warner: Could you outline at the state level, if they keep any of the fines.

Chairman Cook : I believe that any of the dollars from fines go to the school land and trust fund.

Chairman Cook: I think we need to know the answer to that. I think we have to pass this bill considering the situation in Fargo and the confusion that has shown up and if we can help them with their potential law suit. I think the argument would be a lot sounder if some of the money had to go to the school land trust fund.

Senator Hacker: I would vote for an amendment that would state that cities may not access a larger fine then 150% of the state fine amount. I would be comfortable with the bill at that time.

Senator Olafson: I would support some type of amendments as Senator Hacker is proposing.

Senator Anderson: I with draw my motion.

Senator Warner: I think we create a moral hazard with the cities if we allow them to become a profit center. Law enforcement should never become a profit center.

Chairman Cook: I will work at getting some amendments drafted so we know where all the fines go in cities and states. How high should a city be able to go over that and what percent of that should go to the school land trust funds?

Senator Hacker: I need an absolute cap.

Chairman Cook: Maybe about twice the state. We will work on the amendments.

Chairman Cook adjourned the committee.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2392**

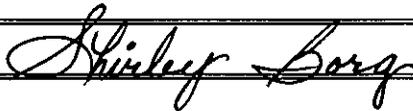
Senate Political Subdivisions Committee

Check here for Conference **Committee**

Hearing Date: **February 9, 2007**

Recorder Job Number: **3262**

Committee Clerk Signature



Minutes:

Chairman Cook called Senate Political Subdivisions committee to order.

Chairman Cook: Amendments are handed out that say when a Home Rule City imposes a fine that exceeds two hundred per cent of the limits. The amount that exceeds two hundred per cent must be paid into the treasury of the proper county to be added to the state school fund.

Senator Warner moved to adopt the amendments to SB 2392.

Senator Hacker seconded the motion.

Discussion:

Voice Vote: All members in favor. Amendments adopted.

Senator Anderson moved a Do Pass as Amended

Senator Warner seconded the motion.

Roll call vote: Yes 5 No 0 Absent 0

Carrier: **Senator Hacker**

Sixtieth
Legislative Assembly
State of North Dakota

PROPOSED AMENDMENTS TO SENATE BILL 2392

Page 1, add a preamble to read as follows:

WHEREAS, there has been a certain amount of confusion or differing opinion as to whether home rule cities have the authority to enact an ordinance imposing fees for traffic violations that exceed the fees as set by the state in section 39-06.1-06;

Page 1, after line 17, insert:

c. Ordinances of a home rule city that established fees in excess of those set forth in section 39-06.1-06 and that were enacted prior to the enactment of subsection b, above, shall be considered valid and enforceable as a lawful exercise of home rule authority.

Page 1, after line 18, insert:

Section 4. RETROACTIVE APPLICATION OF ACT. This Act is retroactive in application.

PROPOSED AMENDMENTS TO SENATE BILL 2392

Page 1, line 17, after the period insert "When a home rule city imposes a fine that exceeds two hundred percent of the limits set forth in section 39-06.1-06, the amount that exceeds two hundred percent of that limit must be paid into the treasury of the proper county to be added to the state school fund."

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Adopted by the Political Subdivisions
Committee

February 9, 2007

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2392

Page 1, line 17, after the underscored period insert "If a home rule city imposes a fee that exceeds two hundred percent of the limits in section 39-06.1-06, the amount that exceeds two hundred percent of that limit must be paid into the treasury of the proper county to be added to the state school fund."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2392: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2392 was placed on the Sixth order on the calendar.

Page 1, line 17, after the underscored period insert "If a home rule city imposes a fee that exceeds two hundred percent of the limits in section 39-06.1-06, the amount that exceeds two hundred percent of that limit must be paid into the treasury of the proper county to be added to the state school fund."

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2392

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2392

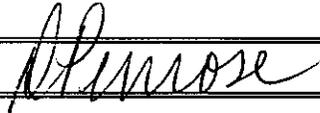
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3793

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2392.

Sen. Tom Fiebiger: Sponsor, introduced the bill. This bill relates to the imposition of fees by home rule cities for certain vehicle and traffic violations. The Fargo City Attorney, Eric Johnson is here today and he will walk you through the bill and its history.

Chairman DeKrey: Thank you. Further testimony in support.

Eric Johnson, Fargo City Attorney: Earlier this month the city of Fargo was served with a lawsuit that tended to be a Class action lawsuit, relating to the subject matter of this bill. This bill had been introduced prior to that lawsuit, but the class action, if allowed, would expose Fargo and other home rule cities to the same types of claims brought against Fargo. The damages are unknown but cities would probably be exposed to hundreds of thousands of dollars of claim damages. The background to this, is that in 1969, the State Legislature authorized home rule powers for cities and as a result, a number of cities throughout the state enacted home rule powers. Fargo enacted theirs in 1971. The problem is that there is a little incongruity in the statutes between those that provide for traffic fines and the general home rule powers authority by state law. Home rule cities, throughout the state, for many years have imposed traffic fines that exceed the state limits, but the claim in this particular lawsuit says

that because of the incongruity in the law, cities are only authorized to impose traffic fines that are allowed by the state schedule, so that if it is a \$20 fine on the state schedule for a stop sign violation, that's all a city can impose. There had been a 1982 AG's opinion, asking about the authority of home rule cities to impose a fine that exceeds the state, and that AG's opinion found that home rule cities, and the interpretation of the home rule powers, in Title 40, where you deal with municipal government, the AG in 1982 found that home rule cities had the authority to impose traffic fines that exceed the state schedule. Somewhat recently, however, we've had three decisions in criminal court; traffic fines are not a criminal matter per se, but in the nature of someone getting a ticket from a law enforcement officer, we've had three cases, one about 6 years ago, and two in the last 10 months, where district court judges have found that this lack of clarity between the law exists, and has found that, in fact, the cities with home rule powers don't have the authority to exceed the state's schedule. So this bill, as proposed would clarify that, would clearly authorize home rule cities to exceed the state schedule. The struggle that we have is that traffic fines are sort of unique. They may start in municipal court, can be appealed to district court, but if either side doesn't like the district court decision, there is no right of appeal. So, while the city of Fargo, has struggled with the decisions of the district court, it doesn't really have an opportunity to ask for appellate review in front of the ND Supreme Court, like in many other cases you have that right. So it brings us to this need for this bill to clarify that and make it clear, that if approved, the legislature says home rule cities have that authority. There was an amendment that was introduced in the Senate that dealt with the fees that exceed twice the limit, would go to the county fund for schools. I guess the most important part for us, is that we at least clarify the law to allow the imposition of fees in excess of the state limit.

Chairman DeKrey: We wouldn't be opening up a can of worms, with the state. We've already given away sales tax. If we allow home rule cities to exceed fines that the state has, aren't we going to set ourselves up in the same situation, for the highway patrol or some other entity comes in here and asks for higher fees that the cities are going to come back and say you can't do that, because then you're going to be encroaching on what we are already paying and we will have to up ours to get it where we want to get it above the state.

Eric Johnson: I think the reasoning behind the higher fines is just a combination of, in the mindset of the driver is, if I don't think I'm going to get caught, if the fine is more prohibitive, I might be more inclined to stop at the stop sign, regardless of whether it is a statewide or citywide event. In the opinion of our law enforcement officials, a heightened fine gets the attention of the drivers. We have more congestion in the cities, than maybe in the rural areas. There's some reason for having a disparity between the fines in the cities as opposed to elsewhere in the state.

Chairman DeKrey: What is the impetus, is it more safety or revenue generating.

Eric Johnson: Well certainly higher fines can generate revenue, revenue is generated by a number of tickets issued, than the amount of fines. The basis for the last increase in fines, approved by the City Commission of Fargo, was clearly based on an analysis of traffic safety.

Rep. Delmore: You mentioned two hundred percent in here, if the fine exceeds 200%. Why would a home rule city need fines that are that excessive in comparison with what is in state law. That's a phenomenal increase to me, and I'm not sure that the constituents back home would approve of us increasing fees.

Eric Johnson: The current fine structure, as part of the analysis done by the Fargo Police Department in asking for the change in the city of Fargo structure a year or so ago, they looked at various cities, Grand Forks, Valley City, Bismarck, Sioux Falls. The state fine structure is

fairly low, compared to neighboring states; 200% on a \$20 stop sign ticket, would be \$40. I think Grand Forks is somewhere around \$70, and all the other cities, if I recall correctly, are in the range of \$60-70 for a stop sign violation. It's not 200% more under this, it's 200% of the state fees, so it's double. But, the issue that the legislature would with this section, is that there are other cities throughout the state that have fines that exceed the state schedule and certainly there are fines that exceed double the state schedule. I don't know this for a fact, but I have it from anecdotal reports to me, that the state's schedule hasn't been updated in quite a few years, maybe in the range of 25-30 years, so that's perhaps part of the reason for the difference.

Rep. Klemin: I'm looking at the state schedule here, it looks to me like it's been updated just about every year, for the past 20 years, every time we've had session, there has been change in here according to the history on this, including in the last session a couple of changes. Has there been any type of analysis of what the penalty fees are around the state in home rule cities as compared to the state fees.

Eric Johnson: Yes, again the analysis that I would look to that has been done, at least the Fargo was, a memorandum prepared by the police department, and we looked at various cities and the state schedule. I can provide that to the committee.

Rep. Klemin: I guess from a philosophical standpoint, do you think it is appropriate for the motoring public to be able to know what kind of penalty fees there are for violation of various provisions, for example a moving violation under the state schedule is a \$20 fine. It sounds like you're saying that in Fargo it's \$70.

Eric Johnson: Actually, Fargo's is currently set at \$100; Grand Forks at \$71, Bismarck at \$50; Moorhead, MN is at \$132.00.

Rep. Klemin: To what extent do you think that the public has a right to know what type of fines they are, as they move from one jurisdiction to the next, as apparently there is a lot of variation.

Eric Johnson: I'm not sure what the philosophical answer is to that, other than the law is the same. I can say that much. If you don't go through a stop sign, you won't need to worry about how much the fine is. Maybe the best answer is, when we all travel from city to city, we may not know what exactly the fines are, but generally speaking the rules of the road are fairly uniform throughout the country. I understand the nature of the question, but that's how I respond to it.

Rep. Klemin: You mentioned that there are a couple of court cases in the last 10 months and the district court held that the city of Fargo cannot exceed the state schedule. Is that what you said.

Eric Johnson: That's correct.

Rep. Klemin: What was the rationale here regarding those court cases.

Eric Johnson: Again, it is just a disparity, or incongruity in the law. The home rule authority given to cities, is one statute and in other place, in the traffic fines itself, it doesn't carve out an exception for the home rule cities so the district court judge, again, in a couple of cases, has found that there is an ambiguity and ruled in favor of the defendant. I should point out that the municipal court judge still imposes the city fines and district court judges throughout the state, that are obviously in the various home rule cities, that have fines that exceed the state, are continuing to impose those higher levels, and even our own district court judges in Cass County, have imposed the city limits rather than the state. But in two particular cases, when argued, it has gone the other way.

Rep. Klemin: The opinions in those cases aren't published so that we can see them anywhere, do you have copies.

Eric Johnson: I can certainly provide copies, yes.

Rep. Koppelman: I'm a little confused. I think they were asking about whether this was a revenue issue or a law enforcement issue. Obviously, I don't think law enforcement in any community is advocating for higher fines. You indicated that the concept was as a deterrent. But then you testified how does the average North Dakotan know what the fines are, how can it be a deterrent if you don't know what they are.

Eric Johnson: It may be that there are strangers from out of town that go into a particular city and don't know exactly what the fine structure is, so it might not be acting like a deterrent, but I would dare say that more of the traffic in Fargo, would be Fargo and Moorhead residents, and I can't tell you, off the top of my head, exactly what the fines are, but I have a sense of what they might be, read the paper and see what they might be, you hear about friends who were pulled over and as a result of all of that, you have some collective knowledge. Of course, the law says we're deemed to know all of that, which frankly we don't.

Rep. Koppelman: I'm curious, you talk about relying on a 1982 AG's opinion for the authority to have these fines as high as they are. I gathered that's been the case for quite a while. One question is, did the city of Fargo think about seeking out clarification of the law, rather than just relying on that AG's opinion, because some courts disagree with the AG's opinion. Was there any sort of preemptive effort, rather than just reactive effort to make sure that it was correct.

Eric Johnson: I'm not aware of any attempt by the City of Fargo, or any other home rule city to seek a bill like this for clarification. I don't know what other thoughts that went into this issue as the fines were raised over time in Fargo.

Rep. Koppelman: Is there, do you see any liability exposure here. Are people who receive these tickets, if nothing happens here, are they going to come back and you unjustly fined me and I want my money back.

Eric Johnson: Yes, a lawsuit was filed at the beginning of this month, seeking that very thing, presumably, the particular representative plaintiff in this class action lawsuit, had five traffic tickets in Fargo.

Rep. Koppelman: For the amount of the loss.

Eric Johnson: Yes, the case is young, just started. The person had five tickets and said, that under the Fargo schedule I had to pay this amount and under the state schedule I would have to pay that amount. The complaint is fairly lengthy and complex. It doesn't ask for a specific dollar amount by any means, but it certainly appears that's what they are getting at. To get that difference back from the City of Fargo.

Rep. Koppelman: Not damages, though, just the amount of the loss.

Eric Johnson: It will be the monetary loss for that, and if the class were approved, it could be, I don't know how far back it would go, all the tickets issued, and then the other possible exposure is that on claims based on section 1983 in the federal code, you could also seek attorney's fees, to be paid.

Rep. Delmore: Right now if a highway patrolman arrests someone within the city limits, they do have to stick to what the state says they can collect in fines and fees, is that correct.

Eric Johnson: Yes.

Rep. Boehning: With higher fees, is there statistically a lower rate of speed in Fargo, or lower DUI rates, how does that compare to the rest of the state. With the higher funds, is there better compliance in Fargo, than in other cities.

Eric Johnson: That's a question that has been looked at by our police department, and looked at again somewhat recently, and the answer is, it's hard to tell. Our city looks at what happens across the river in Moorhead and looked at as far away as Sioux Falls to try and determine whether there is some evidence of greater compliance. You can make an argument that there is, I can't recite that myself, but I have been told this by the police chief, that you can make an argument that there is evidence of greater compliance. There is certainly a theory among law enforcement, that does create a greater deterrent to have higher fines, but you also have to look at other factors like how aggressive is the particular police department in pursuing traffic fines. Other cities may not be ticketing traffic as much and those things are difficult to measure. Our police chief has come to the conclusion that there is a beneficial deterrent effect by having a certain level of fine.

Rep. Klemin: In Fargo, if you're arrested by the highway patrol for a moving violation within the city limits, you said that the person would be fined the amount set out in state law. Is that correct.

Eric Johnson: Yes, I believe so. I probably should have clarified that, I think the question is what is the charge?

Rep. Klemin: Is the amount of the fine depend on whether the person is arrested by a highway patrol vs. the Fargo police department.

Eric Johnson: I believe the amount of the fine depends on what you're charged with. If you're charged with a city ordinance violation, then there is a fine structure associated with that ordinance. If you're charged with a state violation, then you go to district court on your traffic fine and pay that.

Rep. Klemin: So if you run a stop sign in the city of Fargo, and you are arrested by a ND Highway Patrol for doing that, and he charges you under a state statute, then you pay a \$20

fine. But if that same moving violation was observed by a Fargo police department officer, you could be charged a \$100 fine under the city ordinance. It depends on who caught you doing it.

Eric Johnson: I can't say that I'm certain about the answer to that. I think that is the case, I think the practice is, however, that there is a practice that deals with that and the highway patrolman that happened to encounter a driver, whether DUI or other offense within city limits, typically calls in a local police officer to make the charge and to follow through as a matter of course.

Rep. Klemin: In the new subsection 2a, it seems to say to me that you can't have a fee by ordinance that exceeds the limit set out in the NDCC. Then 2b creates an exception to that for home rule. You're saying that there was a 1982 AG's opinion that says that home rule cities can do this notwithstanding this language in the existing law.

Eric Johnson: That is exactly the issue that the district court judges in the recent cases grappled with. There is an entire chapter in the area of century code dealing with municipal government that deals with home rule powers. The analysis that's been done by the AG was that overrides this. There is some evidence for this. There are a number of examples in our legislature where the legislature has carved out specific language that says home rule cities can't go over this amount of fine or can't charge less than this fine. School areas, for example, specific language in there dealing with home rule cities. So there is evidence that the legislative intent had been in the past, to make certain that certain things are not dealt differently by home rule cities. Our interpretation has been that unless it's stated that you don't have home rule city authority, home rule powers chapter gives greater latitude to the home rule cities.

Rep. Klemin: Can you get us a copy of the 1982 AG's opinion.

Eric Johnson: I have that, I don't know if I have the district court judge's opinion present with me today, but I can get them to the committee.

Chairman DeKrey: Thank you. Further testimony in support.

Connie Sprynczynatyk, ND League of Cities: The committee has had some interesting questions. I would like to refocus the discussion this morning. As Eric Johnson has testified, this is clarification. We typically rely on, if there is an AG's opinion requested, and it's offered, a city relies on that until otherwise notified. I think that is the case in regard to traffic fines. Let's go back to safety. There is a big difference in our state, especially those of us who have grown up in this state, including me who learned to drive by driving the grain truck on the ranch. There is a difference between what happens on the wide open highway and what happens in the community. A personal observation, in 1972, my husband and I temporarily lived outside of New York City. We went into the city a lot and drove in New York City. One Sunday we decided there was something we needed to see at Madison Square Garden, and there wasn't any parking. We parked in a No Parking zone, with other cars and got a ticket, and the ticket fine was \$100 and that was in 1972. You had a question about the public's right to know. I would suggest that we've been operating for a very long time under the assumption that the rules are there to create a safe situation. Parking tickets are a little bit different case. There is not a practical way of notifying anybody what the fine is. If you violate a rule or law, then you take your chances and pay the fine. Again, there is a big difference between us who are used to traveling on the wide open spaces versus what we have to handle on a local level with the congestion in a community. Going back to the question of the fines, and what should they be, and how do we set that in relation to state law. The problem is that this is really an issue of customization. What worked in Carrington, may be different from how we make it work in Bismarck, Grand Forks, Fargo, Minot or any other community. So we've been

operating under the AG's opinion, assuming that we have the ability to set the fines differently. Back to the safety issue, it is not a revenue generator and I'll tell you why. If you take the public safety budget of the four larges communities, you will find in every case, the city is spending more on public safety by far, than it has brought into the general fund in property tax. If you added the revenue from fines to the amount from property tax, the budget still exceeds. So it's not to generate revenue, it's to create a deterrent, when someone runs a stop sign, when somebody violates a law. Those other fines and fees can be a deterrent. Can we quantify that, there have been some small changes by the way. Not huge changes, but there have been periodic changes to the state fees. Actually we supported the bill that died in the House that would have increased the state funds for moving violations. So your question about whether or not we'll come back and complain that the state fines are too high, not true. Our focus has to be on safety. The League requests your favorable consideration of this bill. There was quite some concern about the section that was added in the Senate about revenue generation for the state via the local traffic fines. That's not the primary issue here, it is whether or not we can clarify this inconsistency in the state law; which we thought we were okay doing.

Chairman DeKrey: During testimony in the transportation committee on those fines, a former highway patrolman on the committee, stated that if he stopped a taxpayer in Fargo and a city policeman got there at the same time, he drove off because he knew the city police was able to give him a lot higher fine. Do you think that is fair to the citizenry.

Connie Sprynczynatyk: The truth is, if you're not violating the law, whether it's a local ordinance or a state law, you don't have to worry about it.

Chairman DeKrey: The question was is that fair to the citizens.

Connie Sprynczynatyk: I would go back to the safety aspect. Let's be realistic here. The focus here is on creating a safe environment for residents and visitors, whether they are on a highway that runs through a city, or whether they are on a city street. Again, we have issues that are different because of the congestion, because of the concentration of people and vehicles in our community.

Chairman DeKrey: Well if it's clarification you want, let's just amend this to say that "home rule cities may not...", then we'd have our clarification, right.

Connie Sprynczynatyk: I guess certainly you could do that. I would ask you not to do that, for a number of reasons, including public safety that is within your right.

Rep. Delmore: Do you have any examples of studies that show increased fines really do enter into the safety factor.

Connie Sprynczynatyk: As Eric testified, I suspect that we could do an extensive search around the country, we could probably find studies that argue yes, that's true and some that say, it doesn't. There are too many mitigating factors to make that a fair assessment. You know, it's easy to imagine how difficult it is to quantify that. If there a policeman sitting in a spot to be seen by the traffic, it is an attention getter; especially if the fine is not \$5.00.

Rep. Delmore: It doesn't matter if I'm caught violating that anywhere in ND. It's a safety issue wherever it is, because children are involved. I guess my point is, certainly we want policemen to be enforcing that wherever we are, it is a safety issue. I'm just not convinced that paying \$95 for it in Grand Forks and \$35 in Cando. I think it is an equity issue for citizens, and I'm not sure that the case is being made that says in order to have that safety factor involved, it needs to be elevated to that extent.

Connie Sprynczynatyk: I'm going to answer what I think is the question there. I want to go back to customization. The situation in Cando, may be very different than the situation in

Carrington, or in Linton, and let's go back to the question of whether the legislature really wants to develop laws that are so infinitely defined that we can cover every local situation, every local concern and not add several volumes to state law because I can just tell you, that I spend all day, nights and weekends dealing with city issues, and I can assure you that there are no two cities alike. This argument that they ought to be the same everywhere, to me, laboring in the trenches at the local level, is a completely different answer. We need to be able to address the situations as they come to us.

Rep. Delmore: But when the average citizen has no idea in many of our cities, what that charge is, I think there is a fairness issue.

Rep. Koppelman: You talked about the fact that the cities favor this bill. Was that because you didn't want there to be such a disparity between what the state was charging and what the cities around that state were charging.

Connie Sprynczynatyk: I think if you talk to law enforcement around the state, and you talk to the elected people that sits on the boards that have to vote yes or no about whatever the fines might be, I think you would find the prevailing interest is safety, it is not, I've never heard a local official talk about there needs to be elimination of the disparity. The idea is that we need to be able to address the problem situation at a local level. If the citizens are used to running stop signs, and it's just not much of a deterrent because the fine is low, should West Fargo be able to get at the issue of people running stop signs. I guess if West Fargo cares about public safety, they might want to take care of that situation. We're not interested in eliminating the inequity.

Rep. Koppelman: Since you mention West Fargo, my policy chief has told me that in terms of deterrent if there's a squad car sitting there, he doesn't care if they stop anyone or not. His philosophy is that car being there, is the deterrent. You talked about your concern about what

was added in the Senate. Mr. Johnson testified that there are other places in law where the state legislature has given home rule cities authority to maybe do something at a higher level, fines or whatever it might be up to a point. This bill says the sky is the limit, but if it's more than 200% it is going to go the school fund. Would it be wiser to have it more akin to the rest of the law.

Connie Sprynczynatyk: No, that was something that was added by the Senate committee when they took action. That was never a part of the original bill, it wasn't part of the question answered during committee discussions. It was an amendment that one of the legislators brought into the committee discussion later, and it was right before crossover.

Rep. Koppelman: Was the original bill structured to say that you can do whatever we want to do, or was it structured to say that those kinds of limits that are similar to the rest of the law we heard about.

Connie Sprynczynatyk: The idea of the intent behind the original bill, was simply to clarify what district courts have now, in at least the instances that Eric testified to, has now said that there is a lack of clarity. So the default position, was that there wasn't a specific exception on this issue carved out for home rule cities.

Rep. Koppelman: So there wasn't any attempt to standardized along with other law, and say home rule cities could do this much more than what the state does. This was the court saying the AG's opinion was wrong.

Connie Sprynczynatyk: That would be a good short way of saying it.

Chairman DeKrey: If safety is the issue here, and not revenue, and we amend it to say that any amount over the state fee schedule will go into the school trust fund, will the cities still support the bill.

Connie Sprynczynatyk: The short answer is yes, because we believe the clarification is important, but I'm going to back to what Rep. Koppelman said his police chief said, the greatest deterrent is having a patrol car visible, and if the citizens of the state knew how few actual uniformed police officers are able to be on the streets at any given time. It's a good thing we have law abiding citizens. Because if you look at the number of law enforcement to the number of population, it's a little scary. I would submit to you that if we weren't law abiding citizens in this state, and we had to follow the model in other places, you would see those costs go up phenomenally, because public safety is paid for out of the city's general fund, no matter what, it comes out of the general fund. When I tell you that those costs exceed by far the amount that's taken in from property tax, you know that some of that revenue has to come from other sources. Of course, part of the revenue is fund generation. Is it a significant amount, no. You could go up exponentially on the local fines and you would still not pay the full cost of public safety. That's a fact.

Rep. Charging: We can't make enough laws for the people who are going to break them.

Connie Sprynczynatyk: I had a flashback to another incident at least 10 years ago, we had a person driving 70 mph up 3rd street by the post office. That was not a person from out of town who was unaware of the traffic fines in the city that was a resident of the city. I would have to ask the police department to do a search of how many addresses are in the city and out of the city. I would suggest that it is not a rural / urban issue. Again, if people are obeying that speed limit sign, no problem. It's not a rural/urban issue. In fact, that our former mayor, used to get a letter from a citizen who lived outside of Bismarck, who had gotten a parking ticket in downtown Bismarck, and he would pay the fine for them, if they were unhappy about that. They wanted him to forgive it, of course, he didn't have the authority to do that, he would actually pay the parking fee for the person out of town.

Rep. Meyer: This goes back to the discussion about rural vs. urban. Many times rural people have a little better insight. I don't know if you have the chance to go to Amidon, or how many people go to Amidon, they have discovered that people were repeatedly violating their speed limit and finally they took a cop car without an engine and put a dummy in it, and they don't have problems anymore. It's a perfect deterrent, they don't have troubles any more.

Chairman DeKrey: Thank you. Further testimony in support.

Bill Wocken, City of Bismarck City Administrator: Support this bill. You've already heard the history. Bismarck's fines are slightly above the state standard that was done on purpose. The board of city commissioners sat down and looked at the risks, looked at the fines and said we don't think the fines that are presently in place are an adequate deterrent. That was the reason behind the increase in the fines, we relied on the same AG's opinion. We believed that was what home rule charters were all about, the ability to customize the situations to Bismarck. In Bismarck, we have a lot of traffic. There is a lot of hazard, stop light violations, stop sign violations. Is it an effective deterrent, it is very difficult to measure that; because over time things change in a particular city, from Bismarck's enforcement to Fargo's enforcement, etc. Those are difficult decisions to make. It's one of those things where you have to customize the enforcement and the fines to what your problems are. We have increased fines and raised them to a reasonable level. We believe there has been some effective deterrent. I will not tell you that it's 100%. I guess that's one of the issues, enforcement is another issue and those are the things that we struggle with in trying to make the decisions about what kinds of fines and how to enforce our traffic violations.

Rep. Koppelman: You talked about home rule charters and what that is. Yet, it's a common principle that city ordinances can be more restrictive than state law, not less restrictive. How

do home rule charters give cities authority when it comes to fines that didn't exist for other cities that aren't home ruled.

Bill Wocken: My understanding is that home rule charters were adopted to allow cities to address some of the issues that are peculiar to those cities, it gives them some opportunity to customize. I believe the area of fines is one of those areas in which customization is allowed.

Rep. Koppelman: The principle that if you adopt a city ordinance you can always be more restrictive with that ordinance than state law. In other words, the state law is 55 mph. When that highway comes through your town, you can say it's 25 mps home rule or not. What is the difference between home rule and not.

Connie Sprynczynatyk: Generally speaking, there are about 1/3 of the incorporated cities that are home ruled. There are broad powers listed in state law that you can adopt under home rule. Generally, it is considered to be broad authority if you are not home ruled, then there are default positions on certain things that you are going to follow. There is a whole chapter of state law that relates to municipal government. When it is home ruled, the difference is that you know the citizens adopt the charter taking on the broad authority and then that's implemented by ordinance. So for non-home ruled cities, the default would be that in this state the way the constitution is set up, if the constitution gives the authority and the state law gives the implementing ways to exercise that authority, then you've got a body of law to follow. Home rule says that the local citizens can take on that function themselves, but cannot be inconsistent.

Rep. Koppelman: As it relates to this issue, a non-home ruled city in ND, prior to these court cases, we're relying on the 1982 AG's opinion, home ruled cities could have higher fines than non-home ruled cities.

Connie Sprynczynatyk: That would be a good survey question, and we have an electronic way of doing a survey. If there is any information that you want, I can try to get it quickly through a very easy survey tool that we have. My sample would be limited to the city's that have e-mail. I can get it started and get the results to you tomorrow or the next day.

Rep. Klemin: I'm still looking at the 1991 ND Supreme Court case that seems to be pretty close to this issue. I am assuming that you have read this case. They referred in this case, the city of Fargo had a lesser penalty than the state law. Are you familiar with this case.

Eric Johnson: Yes.

Rep. Klemin: That seems to be on the opposite side of where you are in which the court referred to a decision in the State of WA that said there was a constitutional flaw in violation of equal protection (read that section). What is your response that this doesn't result in a violation of equal protection if you address the greater penalty.

Eric Johnson: That case dealt with the idea of whether or not a city could take a Class A misdemeanor and make it a Class B misdemeanor, more directly. Secondly, that was also a criminal forum, sale of alcohol to minor as a crime. This case deals with the same level of offense, both traffic offenses and has to do with the fine structure within that traffic fine system.

Rep. Klemin: In that class action case, are they alleging what's happening violates equal protection laws.

Eric Johnson: Yes.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2392

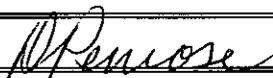
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/27/07

Recorder Job Number: 4009

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at SB 2392.

Rep. Boehning: What if we took out the fees.

Rep. Delmore: I certainly don't like the bill as it stands. I just think we have to do something with the liability because that can affect a lot of the cities, that's what I've heard from people in my town as well.

Rep. Koppelman: That was my thought as well. I concur completely with Rep. Delmore's sentiments. I think the main peril here for the city in question or other cities, they were acting and relying upon a 1982 AG opinion which is reasonable too. Now we have courts reversing that. I can see somebody that got a ticket 10 years ago, suing the city and saying you shouldn't have fined me that much and I want my money back and I want that with interest. So the cities could be in court in huge liability. I think if we could hold them harmless somehow from that and maybe put a cap on the fines that I think Mr. Johnson, from Fargo, testified that, in some places in law we allow home rule cities to do more than what the state does, but only to a point. This is wide open.

Rep. Klemin: Eric Johnson said he would provide me with 3 things, the 1982 AG opinion, the district court decision from Fargo, and a memo from the Fargo Police Department on these

ordinance fines, some discussion about what they were in various places. He was going to get them to me, but I haven't seen any of them. Finally, if what is being done is unconstitutional, no matter what we do in this bill, it won't change that.

Chairman DeKrey: That was my thought, we can't correct it.

Rep. Koppelman: Well we limit liability all the time.

Rep. Dahl: Even if we allow certain caps, will it still be unconstitutional?

Chairman DeKrey: I talked to Mark Friese, an attorney with the Vogel Law Firm, who is involved in this case, he told me that in his mind, ND law is clear, it is already illegal to do this and that previous judges have overruled that, then there is the Supreme Court decision in 1991, and it does not specifically deal with higher fines. It deals with lower fines, but it is silent on higher fines. But they do discuss it.

Rep. Koppelman: Mr. Johnson alluded to the fact that under home rule, or maybe Connie said this, that there are other areas under home rule where they do x, y, z and it is different than the state. Would that also be unconstitutional under the same argument.

Rep. Klemin: That is a different issue.

Rep. Koppelman: Isn't it still equal protection, isn't it.

Rep. Klemin: They way it was stated in the WA case, that was cited by the ND Supreme Court, constitutional flaw is that it vests in the charging authority unbridled discretion to charge an offender of either of two crimes resulting in different sentences for the same offense. That is exactly what is happening there. What you are talking about, is not necessarily the same.

Rep. Griffin: One of our professors on the UND campus, said he would like to help someone challenge it, because on the UND campus if the University police stop you for speeding or if the city police officer stops you, doing the same offense, the fine would be much different.

They both do patrol that exact same jurisdiction too. A lot of times highway patrol is not in cities.

Rep. Koppelman: So this is an equal protection argument.

Rep. Klemin: Yes.

Rep. Koppelman: That's federal constitutional argument, correct. If I go to MN and speed and get a different fine, that's different than what I would get in ND.

Rep. Klemin: You can't be charged with the same offense, in two different states. You can't have different sentences for the same offense. If you get charged in MN and you get charged in ND, those are two different offenses.

Rep. Koppelman: Wouldn't the offense be different if you are charged under a Bismarck city ordinance vs. a ND statute, it might be the same action, but different offenses, isn't it.

Rep. Klemin: I don't know. I am just taking what they quoted here in this court case. It's the same offense and you are getting the different penalty. It's like Rep. Griffin described on campus, if you are caught by the campus cops for running a stop sign and it's \$20 and if you are caught by the city police department, it's \$100.00. Same offense, two different penalties.

Rep. Koppelman: If I go 10 mph over the speed limit in MN, that may be worded different, but it is charged under MN statute vs. ND statute, but we're saying the same violation in ND, if I get charged with going 10 mph over the speed limit on the highway, and I am being charged with a violation of a state law. If I get charged going 10 mph over the speed limit in Bismarck, I may very well be charged with going 10 mph over the speed limit under a city ordinance, not under state statute. That's my point.

Rep. Klemin: The action may be the same, 39-06.1-06 does cover the speed limits. I don't know about the class action lawsuit that they are talking about, I don't know if it is in federal or state court.

Chairman DeKrey: I guess the way I view it, Fargo has itself in trouble, and they want the legislature to fix this, because we are getting caught.

Rep. Klemin: You talked about caps. We have caps. They just decided to change that.

Rep. Onstad: If there is a problem in Fargo, are the other cities going to get in trouble too. It's pretty universal.

Rep. Koppelman: You could have a lot of lawsuits all over the state.

Rep. Boehning: If you get picked up for a traffic violation, be sure that it's the sheriff who picks you up, because it will be a lower fine.

Rep. Kretschmar: If we kill the bill, they will keep doing what they are doing now.

Rep. Boehning: They kept bringing up the issue of safety.

Rep. Klemin: You could say in the bill that this will apply to home rule cities.

Chairman DeKrey: We will take this up later.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2392

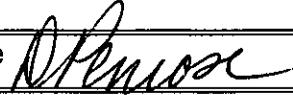
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/28/07

Recorder Job Number: 4125

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at SB 2392.

Rep. Klemin: I asked for a number of things from Erik Johnson, which I am passing out.

Rep. Dahl: Explained her amendment. If this law is unconstitutional, this amendment will clear up this issue.

Rep. Koppelman: Explained his amendment. I was thinking about the equal protection issue and the liability issue for the city. I went through this with John Bjornson from LC, the liability issue I think is covered because they were relying on the AG's opinion. If it would reach the Supreme Court, that would be the only way that we would know if it was constitutional, however, it is rare for the court to apply it. When I asked about the constitutionality, he didn't think it was a problem. This amendment simply amend the bill to do what Rep. Klemin talked about, that home rule cities apparently, said that they could have a fine of about twice of what it is in the state. That would allow them to do more than they are doing. In the bill, it said that anything more than 200%, the money comes back to the state in a convoluted form, I took that part out and made it capped at 200%. I move the amendment.

Rep. Delmore: How will this affect Fargo's proposed fines.

Rep. Koppelman: I assume it would have to lower them.

Rep. Delmore: Second Koppelman amendment.

Rep. Koppelman: I don't disagree with you, the only reason I am suggesting this, it seems to solve a problem in a different way.

Rep. Klemin: I still have a constitutional question. If we keep the status quo, this bill is not going to fix that.

Rep. Meyer: Both of these amendments don't accomplish the same thing.

Rep. Klemin: The Koppelman amendment would have some variation. The Dahl amendment would cap it at 100%, the Koppelman amendment would cap it at 200% but would allow some fluctuation between the 100-200%.

Rep. Onstad: Home Rule allows them to raise it, that's not the case?

Chairman DeKrey: The Dahl amendment takes that out of there.

Rep. Koppelman: In visiting with LC, Home rule cities that have adopted home rule charters have been operating under the assumption that that granted them some unique authority, some autonomy. That was the whole point of the home rule charter. Home rule cities are more restrictive than the state, if the state had a fine of \$20, the home rule cities couldn't go less than that, only charge more. I think the policy decision before us is do we want to undo the home rule charters. Do we want to recognize the home rule charters and have a reasonable cap of 200% or do we want to do nothing and they follow what they are doing now.

Rep. Klemin: I think the equal protection question is still there. The Koppelman amendment still has a problem, if you follow that line of thinking. You will receive two different penalties for the same violation.

Rep. Koppelman: Where was the state of the opinion.

Rep. Klemin: It was in the state of Washington, was the case cited, in 1991.

Chairman DeKrey: Voice vote on the Koppelman amendment. Motion Fails.

Rep. Dahl: Now the fines will be the same. I can't say that I am really comfortable about this.

Rep. Griffin: If we allowed a greater percentage, but if you are charged in overlapping districts, like on campus where there are both, you would be charged the lesser of the two fines.

Rep. Koppelman: Every place would be overlapping with the state, so it would be the lesser fine.

Rep. Kingsbury: Then you are taking away the home rule status.

Rep. Griffin: I move the Dahl amendment.

Rep. Wolf: Second.

11 YES 3 NO 0 ABSENT MOTION CARRIED FOR DAHL AMENDMENT

Chairman DeKrey: We now have the bill before us as amended. What are the committee's wishes.

Rep. Boehning: I move a Do Pass as amended.

Rep. Wolf: Second.

10 YES 4 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Rep. DeKrey

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2392

Page 1, line 16, after "may" insert "not" and after "exceed" insert "two hundred percent of"

Page 1, line 17, remove "If a home rule city imposes a fee that exceeds two"

Page 1, remove lines 18 through 20

Renumber accordingly

Fails

House Amendments to Engrossed SB 2392 (70843.0201) - Judiciary Committee
03/06/2007

Page 1, line 2, remove "home rule"

Page 1, line 7, remove "a.", remove the overstrike over "~~For~~", and remove "Except as otherwise provided under subdivision b, for"

Page 1, line 10, after the first comma insert "no city, including a home rule city, may establish" and overstrike "may be established, by ordinance, which"

Page 1, line 11, overstrike "may not exceed" and insert immediately thereafter "that exceeds"

Page 1, remove lines 13 through 20

Renumber accordingly

Date: 2/28/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2392

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Dahl Amendment

Motion Made By Rep. Griffin Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore		✓
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging		✓	Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman		✓			
Rep. Kretschmar	✓				

Total (Yes) 11 No 3

Absent 0

Floor Assignment —

If the vote is on an amendment, briefly indicate intent:

Motion Carried

Date: 2/28/07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2392

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Boehning Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore		✓
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer		✓
Rep. Charging		✓	Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman		✓			
Rep. Kretschmar	✓				

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. DeKrey

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2392, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2392 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "home rule"

Page 1, line 7, remove "a.", remove the overstrike over "~~Fer~~", and remove "Except as otherwise provided under subdivision b, for"

Page 1, line 10, after the first comma insert "no city, including a home rule city, may establish" and overstrike "may be established, by ordinance, which"

Page 1, line 11, overstrike "may not exceed" and insert immediately thereafter "that exceeds"

Page 1, remove lines 13 through 20

Renumber accordingly

2007 SENATE POLITICAL SUBDIVISIONS

CONFERENCE COMMITTEE

SB 2392

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2392

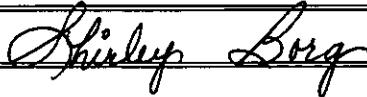
Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 29, 2007

Recorder Job Number: 5628

Committee Clerk Signature



Minutes:

Chairman Cook called the Conference Committee on SB 2392 to order. Senators Cook, Hacker and Anderson and Representatives Boehning, Dahl and Griffin present.

Chairman Cook: In the packet that you have, the top page is how the bill is introduced, the next page is an addition to the bill that it picked up in the Senate and then it went on to the house and got changed a little bit more. Could you just talk about your purpose and intent?

Representative Dahl: SB 2392 as it came over to the House said that Home Rule City had the authority to levy traffic fines as they thought and that was the result of three district court opinions out of the Fargo area that said that state law does not give that explicit authority, however there is an attorney generals opinion that actually said that they do. That is the issue and it is in a law suit in the courts right now. When we were looking at this issue, not only if the authority was there or not, but also the potential equal protection problem that could arise in some circumstances in the state. There was a court case where the City of Fargo v Little Brown Jug. (See attachment #1) The thought of the committee was, it was an offense but it mattered as to who caught you or who saw you.

Representative Boehning: I concur with that too. The City of Fargo, we have the same thing we have the city the county and the state and when you get picked up on one street you could

have two different fines. It is a big issue and we should resolve it somehow and I don't know if this would be the proper way to do it. I think we could do something to make it more equal.

Senator Hacker: I understand the issue of fairness, whether or not I am speeding in Cass County or the City of Fargo may be different and I understand the point that, why speeding should cost you differently in two areas. I am wondering are the fines levied in different amounts because of reason beyond just that of the price. Do they use fines in a different fashion to keep people from doing certain things, whether I driving fifteen miles over the speed limit next to the school verses fifteen miles per hour over the speed limit on a four lane highway.

Representative Dahl: I had legislative council write up some amendments. I am also sensitive to the state fee issue as well. We upped a lot of the fines because the fines are very low at the state level. Some fines have not moved since 1956. (Attachment #2)

Chairman Cook: Your first position on the bill as it came over to you was that all fines in the state should be the same no matter who is levying them, the city, the county, campus police or the state. They should all be set in state century code and so now for the lost income you purpose that we raise the state fines.

Representative Dahl: This was a way to address the equal protection issue and also address the safety issue.

Senator Hacker: What was the safety issue? Was it people not buckling their own seat belts or was it people speeding around school zones and thru cross walks and etc. How does the seat belt address that safety issue?

Representative Dahl: I worked with Representative Guchalla who used to be a former highway patrolman and my initial focus was on the non moving violations. His part was to address some of the child restraint and the seat belt issues.

Chairman Cook: You mentioned equal protection. For some time we have had different levels of fines between various political subdivisions in the state. Has there ever been a ruling that such a traffic fine has been illegal because of equal protection.

Representative Dahl: No, but there is a class action suit pending.

Chairman Cook: We have an attorney general's opinion that Home Rule Cities can levy whatever fine that they want. Correct?

Representative Dahl: That is correct.

Chairman Cook: we have had a good explanation of where the house is. You have indicated that you want to do a lot more than just recede. I was hoping to see the first four words or something.

Chairman Cook adjourned the Conference Committee on SB 2392.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2392

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: April 6, 2007

Recorder Job Number: 5806 2nd Committee Meeting

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook opened the Conference Committee on SB 2392. Senators Cook, Hacker and Anderson and Representatives Boehning, Dahl and Griffin present.

Chairman Cook opened it up for discussion.

Representative Dahl moved the house recede from its amendments 0203 and further amend to hog house the bill to include only what is on section 5 of 0203.

Chairman Cook: You are moving that the house recede from its amendments, and further amend to hog house the bill to include only what is on section 5 of 0203 the Legislative Council study.

Representative Griffin Second the motion.

Discussion:

Senator Hacker: This seems pretty far fetch from what we introduced from the house and that the house passed. Seems like a lot of green lights for roll call.

Representative Dahl: Fargo voted against it.

Chairman Cook: For the record it was 44 to 2 and passed the senate. In the house the vote was 64 yes to 29 opposed. I think we should take into consideration the differences between the two chambers if we negotiate a compromise.

Senator Anderson: This is probably speaking to what was said before. This does have far reaching affect. After it was passed by the senate and I have gotten quite a few comments and it is going to affect cities differently and I do like the idea of a study.

Representative Boehning: I think the study is going to be the right way to go. I know there is a lot of differences between all the cities as we have seen in some of the print outs. Maybe we can get something worked out and get a more level playing field with the cities and counties.

Representative Griffin: Talking with some of the city officials, if we passed what the house version was, the amount of revenue loss would be significant and would force probably a mill levy increase with in the cities and that would even be the cause to some extend with the senate version. We don't want to put pressure on local entities to increase their mill levies. I think there are some constitution questions that neither version really resolves and that is why I think a study would be the best way to go.

Chairman Cook: Representative Griffin, were you one of the 64 or 29?

Representative Griffin: I was one of the 64 for the bill. After further thought on the bill, I have gained more information and changed my position.

Chairman Cook: Representative Griffin, if you position is now one that you don't want to find a compromise between the senate and house and your position is one that you want to change you vote and kill the bill. The easiest way to do that is to simply recede from your amendments and put it back in the version in which it passed the senate 44 to 2 and take it up to your chamber and switch you vote and try to get many colleges to join you to accomplish that. If that is the motive here, I think that is the way we should try and go toward it rather that turn it into something that was entirely not part of the original plan of either chamber when we passed the legislation.

Representative Boehning: When we had the bill before us in the house, the dollars signs weren't brought out, it was more or less inequality and law suit. After we did find some more information on what it was going to cost the cities, no matter if it be with senate version of the two hundred per cent of the cities, I think Bismarck is going to lose approximately two hundred thousand and I think Fargo is in this million dollar range. I think we need to go with the study to find out what needs to be done. That would be our position.

Representative Griffin: One of the reason the house passed the version it did, was we were concerned about constitutional issues. The simplest way to solve the constitutional problem was to say every one is equal. Now we know at this point if we were to adopt the houses position we have seen court cases since that time saying that, the variance levels in jurisdictions has been found constitutional, so we are satisfied with that. The senate version verses the house version, if we were to adopt the senate version, those same constitutional questions would be present. It is not alleviating it. So part of the reason the house version passed at such a high percentage was, we saw it at that time a way to solve the constitutional issue.

Chairman Cook: I would disagree that the constitutional issue was not solved with the senate bill. The sponsors of the bill, who came mainly form Fargo, presented a solution to solve their problem and we basically agreed with there solution and all we did was do an amendment that tied the revenue side of it. They had indicated that money was not an issue. So I think the constitutional question has been solved with the attorney generals opinion and the intent of the sponsors of this legislation.

Representative Dahl: I think what Representative Griffin was referring to was the equal protection problem that the senate version would not have addressed and that was the whole issue.

Senator Hacker: Recognizing that that issue was not addressed under equal protection. I don't know how correlated Minnesota and North Dakota are but it was brought to my attention yesterday that Minnesota can not charge fines in the fashion that they are in similar law. I spoke with legislative counsel to address that situation and we had some amendments drafted that would address the equal protection issue.

Chairman Cook: Let's address the first set of amendments passed out by the house.

Amendment .0206 (Attachment # 1)

Roll call vote: Yes 4 No 2

Senator Hacker passed out the Amendments .0204 and explained them. (Attachment #2)

Representative Dahl: It does not address future litigation.

Representative Boehning: I see it says in subsection 3 that any amount that exceeds two hundred per cent of the fee goes to the state school trust fund. I don't think the cities can take that big of a hit again. I think we are trying to alleviate that. Mill levies would have to go up. The City of Fargo would lose approximately eight hundred thousand and the city of Bismarck would lose about two hundred thousand and it would be a one mill increase in taxes. I don't like the two hundred percent in there. I will be opposed to the amendments.

Chairman Cook adjourned the committee.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2392**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **April 11, 2007**

Recorder Job Number: **5880**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the Conference Committee to order. Senators Cook, Hacker and Anderson and Representatives Boehning, Dahl and Griffin present.

Chairman Cook opened the Conference Committee on SB 2392 and asked for discussion.

No discussion.

Chairman Cook adjourned the Conference Committee on SB 2392.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2392**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **April 12, 2007**

Recorder Job Number: **5939**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the Conference Committee to order. Senators Cook, Hacker and Anderson and Representative Boehning, Dahl and Griffin were present.

Chairman Cook opened the conference committee for discussion.

Representative Dahl: Passed out some proposed amendments the League of Cities came up with and explained them. (Attachment #1)

Chairman Cook: Your intent is to have your bill the way it is but add to that a section of law that would allow the highway patrol to issue tickets in local jurisdictions and have a fine that is equal to the local jurisdiction fine but the money would all go to the school land trust fund.

Senator Hacker: I have some questions about going to district court and meeting the fines and that will go back to the school land trust fund. Does this mean our highway patrol has to know all the city ordinances and changes in fines if they are traveling from one home rule chartered city to the next and pull someone over in different areas? I called the highway patrol and they said to force those kind of fines on them would be a hassle and a headache.

Chairman Cook: Representative Dahl, how does this speak to the original intent of the bill and to the differences that exist between the senate version and house version?

Representative Dahl: In terms of the original intent of the bill as it was introduced this would accomplish this by giving the authority to Home Rule Cities to levy traffic fines.

Chairman Cook: Is there any disagreement that cities ought to be able to set their own level of what the fine is.

Representative Dahl: I think rather than take this piecemeal approach and have such a large disparity, I think what the house was trying to accomplish with the study was to look at ways to bring those to a jurisdiction closer together.

Senator Hacker: I am looking at these amendments and wondering why we are pulling the county law enforcement officers in and saying that they should charge the higher fines and that money will go to the School Lands Trust Fund. This would put some burden on our Highway Patrol Officers as they would have to know the ordinance in every location. I don't think we need that piece in there. I don't think this is germane.

Representative Griffin: This amendment or the senate version is both going to have administrative costs.

Chairman Cook: I think it is important that we do one thing. When we meet down here for legislation, we tend to ask our selves four questions, what is the problem, is it a problem, are we solving the problem or are we creating more problems. The problem we had when this bill was introduced, is there seems to be some question whether or not cities have a legal right to have their own fine structure. It seems simply a problem that they have been doing it for years, there is an attorney generals opinion that says they have the authority to do it but there have been some judges that have questioned that authority. That is what brought the bill forward and that is the problem that we are trying to fix. We can either make it very clear that they do have the right or make it clear that they do not have the right or we can stay silent on these issues and defeat the bill. That is our options. We made it clear in the Senate version

that they do have the right to do that. We were sensitive that they were creating the problem that they were becoming revenue generators and that there was a motive more so to raise money than it was to just promote safety. We were told very much so through the testimony that it was all about safety and was not about money so we put the two hundred percent fix on there to send money to the School Lands Trust Fund. The bill got to the house and every body spoke in favor of the bill and there was no opposition to the bill. You folks amended it to make it very clear that they do not have the right to levy their own fines. So the question before us is; is it going to be our desire that they do have the right or is it going to be our desire that they don't have the right.

Representative Boehning: I think one of the reasons the bill has come before us is that there is a law suite out there that is starting to generate itself a little bit. We told the cities that they do have the right to have the higher fine structure, we haven't changed that in years and now we have a class action law suit that is challenging their right to do that. I would like to see a study on this.

Representative Griffin: I don't think it really matters what we do regarding this law suit, it will continue on. We won't affect the outcome of the law suit because this comes afterwards.

Chairman Cook: Who should determine the final whether cities have that right or not. Should we let the judiciary system or should we do it here.

Representative Griffin: I think the legislature should decide but no matter what we decide we can't go backwards.

Representative Dahl: It is clear to me and I just want to confirm this with the senate that you are very animate about granting the authority but also extremely animate about keeping the two hundred percent in there and you will not consider negotiating on that.

Chairman Cook: I haven't seen anything I would consider yet. I have been trying to think of something that we could compromise on. I think the issue is can they or can't they and who keeps all the money.

Representative Griffin: I think we could come to an agreement that they can but the two hundred percent is the issue. I think we could come to a consensus that they can but my position is that they would keep the money themselves.

Representative Boehning: No matter which way we go with these amendments we have, the cities are going to lose. If we start taking their revenue that they have been budgeting on for many years they will lose revenue. The City of Bismarck will lose a mill and Fargo, ND would be four mills.

Chairman Cook The cities lose with the Senates version. How did the cities testify when that bill was introduced to the house?

Representative Boehning: There was no discussion on revenue, it was all about safety. They weren't really happy one way or another with the Bill.

Chairman Cook adjourned the Conference Committee on SB 2392.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2392**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **April 13, 2007**

Recorder Job Number: **5985**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the Conference Committee on SB 2392 to order. Senators Cook and Hacker and Representatives Boehning, Dahl and Griffin present. Senator Anderson absent.

Chairman Cook opened the Conference Committee and asked for discussion.

Senator Hacker moved that the house recede from its amendments.

No second.

Chairman Cook: That motion died because of lack of second.

Senator Hacker moved this committee dissolve

Representative Boehning seconded the motion.

Roll call vote: Yes 4 No 0 Absent 1

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2392**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **April 17, 2007**

Recorder Job Number: **6082**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the Conference Committee to order. Senators Cook, Hacker, and Anderson and Representatives Boehning, Dahl and Griffin present.

Chairman Cook opened the Conference Committee on SB 2392.

Representative Boehning made a motion that the Senate accede to the House Amendments on SB 2392.

Representative Dahl seconded the motion.

Discussion: None

Roll call Vote: Yes 3 No 3 Absent 0

Motion failed.

Representative Griffin: Would the Senate be at all willing to look at this if we kept the two hundred per cent provision and look at Representative Dahl's earlier amendment to increase the state traffic fees.

Senator Cook: I would not be.

Senator Hacker: No

Senator Anderson: No

Representative Griffin: Do you have any position other than the two hundred per cent that you would consider adopting?

Senator Cook: I will say no to that question.

Senator Hacker: At some point the house started out at zero so between zero and two hundred per cent, one hundred and fifty per cent does not seem appropriate.

Representative Boehning: Being the Senate has called us back into conference, what is your proposal or what are your wishes?

Senator Hacker moved that the house recede from their amendments on SB 2392.

Senator Anderson seconded the motion.

Discussion:

Senator Cook: There are two ways we can resolve this. One we can find some compromise here and it appears to me that that is going to be difficult to do. The other is we make a motion and then we take it to the floor and let a larger group than the six of us speak to that motion.

Representative Boehning: The third option would be to take the bill and have an up or down vote on the floor.

Roll call vote: Yes 3 No 3 Absent 0

Motion failed

Chairman Cook asked if there was anything anyone wanted to add to the conference committee.

Chairman Cook adjourned the Conference Committee on SB 2392.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2392**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **April 18, 2007**

Recorder Job Number: **6111**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook opened the Conference Committee on SB 2392. Senators Cook, Hacker and Anderson and Representatives Boehning, Dahl and Griffin present.

Chairman Cook asked for suggestions or thoughts.

Representative Dahl: I feel that the house is really willing to come to some sort of middle ground in the hope that the senate would be amenable to that as well. One suggestion noted was to the effective date not until 2009 so we would have the time for the law suit to play out and do the study in between and still possibly go to the two hundred per cent.

Senator Hacker: I am a little confused. The amendments that have been proposed are really quite bipolarized as to what the house has gone over but it seems like there is this want to have the senate version but just not yet. I guess I don't understand.

Representative Dahl: I think we are just trying to demonstrate that we are willing to be flexible here. We are willing to compromise but at the same time there are a lot of different factors that say here we have a law suit and we also need to study the impact to the cities and that would allow time to pull in all interested groups and look at this before it is effective.

Chairman Cook: When you talk about the law suit, you are talking about the possible class action law suit. What has that to do with this bill?

Representative Dahl: I guess the reason I referenced it was because the house did have a concern on the equal protection issue and the court could either move that issue forward or throw it out prior to trial.

Chairman Cook: That lawsuit is based on current law and has nothing to do with what the law is going to say if we pass this it goes into effect in 2007 or 2009, is that correct?

Representative Dahl: Yes that is right however if we don't at least look at the fairness issue, no matter what we do if that fairness issue still persists in the law that we pass, I am not saying that that will effect that law suit but we do in some way need to address that issue in our state law and this does not address it.

Chairman Cook: You keep making the argument on the house side about your sensitivity toward the law suit, maybe that is one of the challenges we have here in finding an agreement. I am not sensitive one bit to the law suit, the threat of the lawsuit, the possible success or lack of success of the lawsuit. If you make an argument to me that we have a delayed date because it might diminish the pain a city has in their budgeting process because of their lost revenue with the two hundred percent then I think you would be making a good argument for a delayed date.

Senator Anderson: This far along in the session, I don't know any ramifications of what any loss of revenue is going to be for anybody and what effect it is going to have on property taxes. When we passed this out it looked a little rosier, now I am not so sure. I would like to see something happen so that we don't reduce the amount of income that cities are realizing at the present time, if that means delaying it for two years for implementation that is OK for me.

Chairman Cook: If a city is setting fines above the two hundred per cent thresh hold then this bill is going to affect their revenue at some point whether we have an effective date of 2007 or 2009. I am sure there are cities out there that this will affect.

Senator Anderson: That is a point well taken. I am just thinking that all cities are going to be different that are doing this and they may do something with in their fine structure over the next two years to get it in so that the income might make up its self. That is my problem.

Chairman Cook adjourned the Conference Committee on SB 2392.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2392**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **April 19, 2007**

Recorder Job Number: **6141**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the Conference Committee on SB 2392 to order. Senators Cook, Hacker and Anderson and Representatives Boehning, Dahl and Griffin present. Connie Sprynczynatyk, League of Cities, brought cookies for the committee.

Chairman Cook opened the Conference Committee on SB 2392 and asked if anyone had any suggestions or motions they would like to make at this time.

Representative Dahl: What we floated yesterday was the idea of not having the implementation date until 2009. I think that is a good policy as you brought up one very good reason is to allow cities to plan for this as well as any legal action if it would even have an impact on this to let that play out. I think this is a very reasonable compromise.

Senator Hacker: The planning and budget process, if I recall the testimony, never once came up on the Senate side. I read the house minutes and that never came up over there either, so I don't know if that was a concern of the cities.

Representative Dahl: It is a concern whether it was testified to or not. It is realty and I think that you should consider it as part of the entire piece of legislation.

Chairman Cook: If that was to happen would you take this bill to the house and carry it to the floor in an effort to get that conference committee reported and then pass the bill.

Representative Dahl: I can't speak to whether the assembly would pass it or not. My position is this is not a good policy but at the same time it makes it easier on the cities to delay the implementation to 2009 should it pass.

Chairman Cook : Representative Dahl, somebody is going to carry this bill to the floor and I have seen many conference committee reports get carried to the floor "please support the conference committee report and pass the bill" or "please support the conference committee report and then kill the bill". What do you think your statement would be?

Representative Dahl: I would probably not advocate for the passage of the bill however if the house chooses to pass it, it would at least give some time for planning and preparation.

Representative Boehning: I think if we do a delay to 2009, I think we will be sitting here at the same table in two years arguing the same points as to why we went down to the state level. We are either going to have to pass something out of here that is going to work for the cities or we are going to have to make it such a bad bill that nobody is going to want to look at it and kill it. Maybe we need to raise the fines up to three hundred percent to where they are now in the state level and put that in there and kill the whole thing.

Senator Hacker: As long as we are having this conversation now what I hear is two out of the three on the house side is to get rid of the bill. I am not interested in changing the senate version. If that is your intent, go right ahead and run it right up the flag pole and kill it over there. I see no reason why if you guys want to kill it that we should do any more work on our floor session on this bill.

Representative Griffin: We have met here how many times. You are putting the house in the position to accept the Senate version or nothing. We don't have any other option and we have laid out several amendments and none of them are acceptable. So that is a dilemma. Of

course at this point we would like to kill it but if there is some compromise you are willing to make, we are certainly willing to look at it.

Chairman Cook: I don't understand the need for a compromise because no matter what we do to this bill you are going to take it to the house floor with the intent of killing it. I say good luck to you in your efforts, you can do that in the way it is right now or you can do that with an amendment on it. The only thing an amendment to this is going to do is send it back to the senate if you are unsuccessful in killing it in the house. That is why we are not getting any where.

Representative Boehning: If we are not going to get anywhere we might as well just dissolve the committee and let it go. We are offering some compromises one way or the other and think we are coming half way close and we are not going to accede to the senate amendments.

Chairman Cook adjourned the Conference Committee on SB 2392.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2392**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **April 20, 2007**

Recorder Job Number **6187**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook opened the Conference Committee on SB 2392. Senators Cook, Hacker and Anderson and Representatives Boehning, Dahl and Griffin present.

Representative Dahl: I want to express that I am disappointed that we couldn't entertain reasonable amendments in this committee such as the delayed implementation date or study but in the interest in moving forward, I move that the House Recede from the Senate amendments.

Representative Dahl: Moved that the House Recede from the Senate Amendments on SB 2392.

Representative Boehning seconded the motion.

Discussion: None

Roll call Vote: Yes 5 No 1 Absent 0

Motion passed.

Chairman Cook adjourned the Conference Committee

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2392

That the House recede from its amendments as printed on page 867 of the Senate Journal and page 880 of the House Journal and that Engrossed Senate Bill No. 2392 be amended as follows:

Page 1, line 1, after "reenact" insert "sections 39-06.1-06, 39-08-03.1, and 39-09-01 and"

Page 1, line 2, after "to" insert "traffic offense fees and" and remove "home rule"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-06. Amount of statutory fees. The fees required for a noncriminal disposition pursuant to either section 39-06.1-02 or 39-06.1-03 must be as follows:

1. For a nonmoving violation as defined in section 39-06.1-08, a fee of any amount not to exceed twenty dollars.
2. For a moving violation as defined in section 39-06.1-09, a fee of ~~twenty~~ forty dollars, except for:
 - a. A violation of section 39-10-26, 39-10-26.2, 39-10-41, 39-10-42, 39-10-46, or 39-10-46.1, a fee of fifty dollars.
 - b. A violation of section 39-10-05 involving failure to yield to a pedestrian or subsection 1 of section 39-10-28, a fee of fifty dollars.
 - c. A violation of section 39-21-41.2, a fee of ~~twenty-five~~ fifty dollars.
 - d. A violation of subsection 1 of section 39-12-02, a fee of one hundred dollars.
 - e. A violation of subdivision d of subsection 1 of section 39-12-04, a fee of one hundred dollars.
3. Except as provided in subsections 7 and 11 of this section, for a violation of section 39-09-02, or an equivalent ordinance, a fee established as follows:

Miles per hour over
lawful speed limit

Fee

1 - 5	\$ 5
6 - 10	\$ 5 plus \$1/each mph over 5 mph over limit
11 - 15	\$ 10 plus \$1/each mph over 10 mph over limit
16 - 20	\$ 15 plus \$2/each mph over 15 mph over limit
21 - 25	\$ 25 plus \$3/each mph over 20 mph over limit
26 - 35	\$ 40 plus \$3/each mph over 25 mph over limit
36 - 45	\$ 70 plus \$3/each mph over 35 mph over limit
46 +	\$100 plus \$5/eäch mph over 45 mph over limit

4. For a violation of section 39-09-01, or an ordinance defining careless driving, a fee of ~~thirty~~ fifty dollars.
5. For a violation of section 39-09-01.1, or an ordinance defining care required in driving, a fee of ~~not less than ten dollars nor more than thirty~~ fifty dollars.
6. For a violation of any traffic parking regulations, except a violation of subsection 10 of section 39-01-15, on any state charitable or penal institution property or on the state capitol grounds, a fee in the amount of five dollars.
7. On a highway on which the speed limit is a speed higher than fifty-five miles [88.51 kilometers] an hour, for a violation of section 39-09-02, or an equivalent ordinance, a fee established as follows:

Miles per hour over lawful speed limit	Fee
1 - 10	\$2/each mph over limit
11 +	\$20 plus \$5/each mph over 10 mph over limit

8. For a violation of section 39-21-41.4, a fee ~~not to exceed twenty~~ of forty dollars.
9. For a violation of section 39-21-44 or a rule adopted under that section, a fee of two hundred fifty dollars.
10. For a violation of subsection 3 of section 39-21-46, a fee established as follows:
 - a. Driving more than ten hours since the last eight hours off duty, driving after fifteen hours on duty since the last eight hours off duty, driving after sixty hours on duty in seven days or seventy hours in eight days, no record of duty status or log book in possession, failing to retain previous seven-day record of duty status or log book, or operating a vehicle with four to six out-of-service defects, one hundred dollars;
 - b. False record of duty status or log book or operating a vehicle with seven to nine out-of-service defects, two hundred fifty dollars;
 - c. Operating a vehicle after driver placed out of service, operating a vehicle with ten or more out-of-service defects, or operating a vehicle that has been placed out of service prior to its repair, five hundred dollars; and
 - d. All other violations of motor carrier safety rules adopted under subsection 3 of section 39-21-46, fifty dollars.
11. On a highway on which the speed limit is posted in excess of sixty-five miles [104.61 kilometers] an hour, for a violation of section 39-09-02, or equivalent ordinance, a fee of five dollars for each mile per hour over the limit.
12. For a violation of a school zone speed limit under subdivision b of subsection 1 of section 39-09-02, ~~or, notwithstanding subsection 2 of section 40-05-06 or section 40-05.1-06, of an ordinance in a city or home rule city for a violation of a speed limit dependent upon being on or near a school~~, fees for a noncriminal disposition are forty dollars for one through ten miles per hour over the posted speed; and forty dollars, plus ~~one dollar~~

five dollars for each additional mile per hour over ten miles per hour over the limit ~~unless a greater fee would be applicable under this section.~~

13. For a violation of a highway construction zone speed limit under subsection 2 of section 39-09-02, a fee of eighty dollars for one through ten miles per hour over the posted speed; and eighty dollars plus two dollars for each mile per hour over ten miles per hour over the limit, unless a greater fee would be applicable under this section. The fee in this subsection does not apply to a highway construction zone unless individuals engaged in construction are present at the time and place of the violation and the posted speed limit sign states "Minimum Fee \$80".

SECTION 2. AMENDMENT. Section 39-08-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-08-03.1. Exhibition driving and drag racing - Definitions - Penalty.

1. ~~No person~~ An individual may ~~not~~ engage in exhibition driving of any vehicle on a highway, street, alley, sidewalk, or any public or private parking lot or area, ~~nor~~.
2. An individual may ~~any person not~~ engage in a race, a speed competition, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration. ~~Any person~~
3. An individual who violates ~~this section by engaging in an act defined by subdivision b of subsection 2 1~~ must be assessed a fee of ~~fifty one~~ one hundred dollars. ~~Any person~~ An individual who violates ~~this section by engaging in an act defined by subdivision a or c of subsection 2~~ must be assessed a fee of ~~one two~~ two hundred dollars.
- 2- 4. As used in this section:
 - a. "Drag race" means the operation of two or more vehicles from a point side by side by accelerating rapidly in a competitive attempt to cause one vehicle to outdistance the other; or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speed or powers of acceleration of such vehicle or vehicles within a certain distance or time limit.
 - b. "Exhibition driving" means driving a vehicle in a manner ~~which that~~ disturbs the peace by creating or causing unnecessary engine noise, tire squeal, skid, or slide upon acceleration or braking; or driving and executing or attempting one or a series of unnecessarily abrupt turns.
 - c. "Race" means the use of one or more vehicles in an attempt to outgain, outdistance or to arrive at a given distance ahead of another vehicle or vehicles; or the use of one or more vehicles to willfully prevent another vehicle from passing the racing vehicle or vehicles, or to test the physical stamina or endurance of the persons driving the vehicles over a long-distance driving route.
- 3- 5. Nothing in this section ~~shall be construed as prohibiting~~ prohibits drag racing, exhibition driving, or similar events when carried out in an organized manner on a track or other privately owned area specifically set aside and used solely for such purposes by drivers of motor vehicles, including snowmobiles.

SECTION 3. AMENDMENT. Section 39-09-01 of the North Dakota Century Code is amended and reenacted as follows:

39-09-01. Basic rule - Penalty for violation. ~~No person~~

1. An individual may not drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with ~~the foregoing, every person~~ this, an individual shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. ~~Any person~~ An individual who drives a vehicle upon a highway or private or public property open to the public for the operation of motor vehicles without heed to the requirements or restrictions of this section has committed careless driving ~~and must be assessed a fee of thirty dollars. Any person~~
2. An individual who, by reason of careless driving ~~as herein defined~~, causes and inflicts injury upon the ~~person~~ body of an operator of snow removal equipment engaged in snow removal operations or causes damage in excess of one thousand dollars to snow removal equipment engaged in snow removal is guilty of an infraction.
3. As used in this section, "snow removal equipment" means a vehicle that is operated by ~~a person~~ an individual employed by or on behalf of an authority in charge of the maintenance of the highway to perform winter maintenance snow and ice removal, including plowing, hauling away, salting, and sanding."

Page 1, line 7, remove "a.", remove the overstrike over "For", and remove "Except as otherwise provided under subdivision b, for"

Page 1, line 10, after the first comma insert "a city, including a home rule city, may not establish" and overstrike "may be established, by ordinance, which"

Page 1, line 11, overstrike "may not exceed" and insert immediately thereafter "that exceeds"

Page 1, remove lines 13 through 20

Page 1, after line 20, insert:

"SECTION 5. LEGISLATIVE COUNCIL STUDY - TRAFFIC OFFENSE FEE STRUCTURE. The legislative council shall consider studying, during the 2007-08 interim, the fee structure for noncriminal traffic offenses. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Re-number accordingly

March 30, 2007

Att #2

4-6-07

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2392

That the House recede from its amendments as printed on page 867 of the Senate Journal and page 880 of the House Journal and that Engrossed Senate Bill No. 2392 be amended as follows:

Page 1, line 1, remove "subsection 2 of"

Page 1, line 2, after "for" insert "and enforcement of"

Page 1, line 3, after "violations" insert "; to provide an effective date"

Page 1, line 5, replace "Subsection 2 of section" with "Section"

Page 1, after line 6, insert:

"40-05-06. City fines and penalties limited - Enforcement.

1. Except as provided in subsections 2 and ~~3~~ 4, the fine or penalty for the violation of any ordinance, resolution, or regulation of a city may not exceed one thousand dollars, and the imprisonment may not exceed thirty days for one offense."

Page 1, line 7, remove "a." and replace "subdivision b" with "this subsection"

Page 1, line 13, remove "b."

Page 1, after 20, insert:

3. A law enforcement officer, other than an officer of a home rule city, shall enforce an equivalent ordinance instead of a state law for a traffic offense if the officer is within the concurrent jurisdiction of a home rule city and the fee for the ordinance exceeds the fee in section 39-06.1-06. The city shall transfer the amount of the fee for an equivalent state offense, in addition to any amount that exceeds two hundred percent of the fee for the equivalent state offense, to the state treasurer for deposit in the state school fund. Notwithstanding the powers and duties granted a law enforcement officer under sections 39-03-09 and 11-15-03, a law enforcement officer shall enforce this subsection.
4. For every violation of a city ordinance enforcing the requirements of 40 CFR 403 relating to publicly owned treatment works, or prohibiting shoplifting, vandalism, criminal mischief, or malicious mischief, the penalty may not exceed a fine of one thousand dollars, imprisonment for thirty days, or both such fine and imprisonment.
5. This section does not prohibit the use of the sentencing alternatives, other than a fine or imprisonment, provided by section 12.1-32-02 for the violation of a city ordinance, nor does this section limit the use of deferred or suspended sentences under subsections 3 and 4 of section 12.1-32-02.

SECTION 2. EFFECTIVE DATE. Subsection 3 of section 40-05-06 becomes effective on the date the attorney general certifies to the secretary of state that a federal court has held that it is a violation of the Constitution of the United States for a home

2

att # 2

9-6-07

rule city to charge a fee for violation of an ordinance which exceeds the fee allowed for an equivalent state offense."

Renumber accordingly

att #1
4-06-07

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2392

That the House recede from its amendments as printed on page 867 of the Senate Journal and page 880 of the House Journal and that Engrossed Senate Bill No. 2392 be amended as follows:

Page 1, line 3, after "violations" insert "; to provide for a legislative council study"

Page 1, after line 20, insert:

"SECTION 2. LEGISLATIVE COUNCIL STUDY - TRAFFIC OFFENSE FEE STRUCTURE. The legislative council shall consider studying, during the 2007-08 interim, the fee structure for noncriminal traffic offenses. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Offered 4/12/07
Rep Dak

Att. #1
4-12-07

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2392

Page 1, line 3, replace "declare an emergency" with "provide for a legislative council study"

Page 1, line 9, replace "including" with "except"

Page 1, line 12, after the period insert "For every violation of a home rule city ordinance that regulates the operation or equipment of a motor vehicle or which regulates traffic, except those ordinances listed in section 39-06.1-05, a state or county law enforcement officer shall enforce the ordinance of the home rule city, including the fee. The district court shall transfer the fee to the treasury of the proper county to be added to the state school fund."

Page 1, after line 12, insert:

"SECTION 2. LEGISLATIVE COUNCIL STUDY - TRAFFIC FINES. The legislative council shall consider studying, during the 2007-08 interim, the traffic fines imposed by state and local governments. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Remove line 13

Renumber accordingly

Problem

Date: 4-13-07
Roll Call Vote # 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2392

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Moved the Committee be Dissolved

Motion Made By Senator Hacker Seconded By Rep. Boehning

Senators	Yes	No	Representative	Yes	No
Sen. Cook	X		Rep. Boehning	X	
Sen. Hacker	X		Rep. Dahl	X	
Sen. Anderson	absent		Rep. Griffin	X	

Total (Yes) 4 No 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 2392 (, as (re)engrossed):

Date: 3-29-07
4-4-07 Postponed
4-6-07
4-11-07
4-12-07
4-13-07

Your Conference Committee Senate Political Subdivisions

For the Senate:

For the House:

4-20	4-19	4-18-07		3-29	4-6	4-11	4-12	4-13	4-11	3-29	4-6	4-11	4-12	4-13	4-17	4-18	4-19	4-20-07
P	P	P	Senator Cook	P	P	P	P	P	Rep Boehning	P	P	P	P	P	P	P	P	P
P	P	P	Senator Hacker	P	P	P	P	P	Rep Dahl	P	P	P	P	P	P	P	P	P
P	P	P	Senator Anderson 4-18	P	P	P	P	P	Rep Griffin	P	P	P	P	P	P	P	P	P

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 867 -- _____

_____ and place 2392 on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 2392 was placed on the Seventh order of business on the calendar.

DATE: 4-20-07
 HOUSE CARRIER: Rep. Boehning SENATE CARRIER: Senator Cook

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Representative Dahl
 SECONDED BY: Rep. Boehning
 VOTE COUNT: 5 YES 1 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

SB 2392, as engrossed: Your conference committee (Sens. Cook, Hacker, Anderson and Reps. Boehning, Dahl, Griffin) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 867 and place SB 2392 on the Seventh order.

Engrossed SB 2392 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

SB 2392

Office of the Attorney General
State of North Dakota

Opinion No. 82-62

Date Issued: August 19, 1982
Requested by: Richard W. Olson
Larimore City Attorney

--QUESTIONS PRESENTED--

I.

Whether a non-home rule city may establish a fee for violations of speed limit ordinances where the fee exceeds the amount set forth in Section 39-06.1-06 of the North Dakota Century Code.

II.

Whether a home rule city may establish a fee for violations of speed limit ordinances where the fee exceeds the amount set forth in Section 39-06.1-06, N.D.C.C.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that a non-home rule city may not establish a fee for violations of speed limits ordinances where the fee exceeds the amount set forth in Section 39-06.1-06, N.D.C.C.

II.

It is my further opinion that a home rule city may establish a fee for violations of speed limit ordinances where the fee exceeds the amount set forth in Section 39-06.1-06, N.D.C.C.

--ANALYSIS--

I.

All North Dakota cities have statutory authority to regulate the speed of motor vehicles within their corporate limits. See Section 40-05-01(18), N.D.C.C. In providing for violations of these ordinances regulating motor vehicles and traffic, fees may be

established by ordinance, but may not exceed the amount provided for in state law. Section 40-05-06(2), N.D.C.C., states as follows:

40-05-06. CITY FINES AND PENALTIES LIMITED.

2. For every violation of a city ordinance regulating the operation or equipment of motor vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, a fee may be established, by ordinance, which shall not exceed the limits, for equivalent categories of violations, set forth in section 39-06.1-06.

Section 39-06.1-06, N.D.C.C., mentioned in the above statute, provides that fees for moving violations shall be in the amount of twenty dollars. Moving violations, and their equivalent ordinances, are defined by Section 39-06.1-09, N.D.C.C., to include speeding violations. Therefore, a violation of a city ordinance regulating the speed of a motor vehicle is a moving violation. As such, the maximum fee which the non-home rule city may charge for a violation of its speeding ordinance cannot exceed the amount of twenty dollars as provided for in Section 39-06.1-06, N.D.C.C.

II.

As stated, state law, as provided for in Section 40-05-06(2), N.D.C.C., restricts fees for violations of city ordinances regulating motor vehicles and traffic to the amount set forth in Section 39-06.1-06, N.D.C.C. (twenty dollars). However, cities which have adopted a home rule charter and have implemented its charter powers by ordinance shall supersede conflicting state law within the jurisdiction of the city. Section 40-05.1-05, N.D.C.C., states, in part as follows:

Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of the city any law of the state in conflict therewith, and shall be liberally construed for such purposes.

In *Litten vs. City of Fargo*, 294 N.W.2d 628 (N.D. 1980), our Supreme Court stated that the supersession provision set out in Section 40-05.1-05, N.D.C.C., applied only to those powers listed in Section 40-05.1-06, N.D.C.C., provided they are also included in the home rule charter and actually implemented by city ordinance.

Section 40-05.1-06, N.D.C.C., as to the power of home rule cities, provides two subsections which authorize home rule cities to enact ordinances as to traffic and motor vehicle regulations and to provide penalties for violations of same. These two subsections state as follows:

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.

9. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.

The concluding sentence of Section 40-05.1-06, N.D.C.C., states as follows:

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.

A home rule city does possess the statutory power to enact ordinances regulating traffic and motor vehicle activity within its city limits. Where such authority is included in the city's home rule charter and implemented by city ordinance, as required by *Litten v. City of Fargo*, supra, such ordinance shall supersede conflicting state laws. Where a home rule city charter and ordinance provides for fees for violations of city ordinances regulating motor vehicles and traffic in amounts exceeding the limits stated in Section 39-06.1-06, N.D.C.C., the state law shall be superseded by the home rule city ordinance only within the jurisdiction of the city.

Officials of home rule cities should be once again reminded that the supersession provisions set out in Section 40-05.1-05, N.D.C.C., will work with respect to conflicting state laws only when such authority is included in the home rule city charter and implemented by city ordinance. See *Litten v. City of Fargo*, 294 N.W.2d 628, 632 (N.D. 1980).

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald
Attorney General

Prepared by: Terry L. Adkins
Assistant Attorney General

MEMORANDUM

To: Erik Johnson, City Attorney
From: Tristan Van de Streek, City Prosecutor
Date: February 26, 2007
Re: Equal Protection in the context of Fargo's traffic fines

You asked me to address Equal Protection in the context of Fargo's traffic fine schedule. As a starting point of that inquiry it is important to note that it is well settled that Equal Protection, as made applicable to the States through the Fourteenth Amendment, does not require geographical uniformity. See Salzburg v. Maryland, 346 U.S. 545 (1954). The vast patchwork of federal, state, and municipal laws in this country make this equal protection principle quite evident.

Generally Equal Protection requires that all similarly situated persons be treated equally. This is satisfied if a particular statute applies alike to all persons within a class, the definition of which class is reasonable rather than arbitrary or capricious. The class must also have a real and substantial relationship to the health, safety, and welfare of the public.

The question then becomes whether the class created by the Fargo Municipal Code is reasonable and not arbitrary. If the creation of the class is not arbitrary, it must have a real and substantial relationship to the health, safety, and welfare of the public in order to comply with Equal Protection.

Although this specific issue hasn't been decided by the North Dakota Supreme Court, it has been decided in Ohio. The laws of the State of Ohio with respect to municipal home rule are similar to what we have done in North Dakota. Ohio also has provisions in its state law similar to 12.1-01-05.

Ohio confronted many of the same issues which we are addressing today, back in the 1970's. The Ohio Supreme Court of City of Columbus v. Molt, 304 N.E.2d 24, (OH 1973), stands for the proposition that municipal home rule powers, which are conferred by the State Constitution in both ND and OH, supersede state statutory requirements which might be read to require territorial uniformity.

Ohio has also specifically addressed equal protection as it relates to home rule municipalities imposing fines greater than the amount set in state law. The

Non-Criminal Traffic Fine Increase Proposal:

The table below represents the proposed increase in fines for non-criminal traffic violations within the City of Fargo:

Citation	Fargo	Bismarck	Grand Forks	West Fargo	North Dakota Highway Patrol	Moorhead	Sioux Falls	Billings	Fargo's Proposed Fine
Failure to Obey Stop Sign	\$60	\$50	\$71	\$30	\$20	\$132	\$94	\$95	\$100
Failure to Obey Traffic Signal (red-light)	\$60	\$50	\$101	\$30	\$20	\$132	\$94	\$95	\$100
Following too Close	\$60	\$50	\$41	\$30	\$20	\$132	\$94	\$95	\$100
Failure to Yield	\$60	\$50	\$41	\$30	\$20	\$132	\$94	\$95	\$100
Wrong Way on a One Way Street	\$60	\$50	\$71	\$30	\$20	\$132	\$94	\$95	\$100
Careless Driving	\$100	\$100	\$101	\$60	\$30	\$182	\$94	\$95	\$300
Seat Belt Violation	\$40	\$40	\$71	\$30	\$20	\$107	\$20	\$30	\$60
Failure to Display Vehicle License	\$60	\$40	\$31	\$30	\$20	\$122	\$69	\$95	\$100
Exhibition Driving	\$120	\$150	\$101	\$50	\$50	\$122	\$94	\$95	\$150
Failure to have Vehicle Under Control	\$60	\$50	\$51	\$50	\$30	\$132	\$94	\$95	\$100
Speeding :10 MPH Over Limit	\$50	\$40	\$51	\$25	\$10	\$122	\$79	\$95	\$75 1 - 10 Miles Over Limit
15 MPH Over Limit	\$70	\$60	\$51	\$35	\$15	\$142	\$99	\$95	\$100 11 - 15 Miles Over Limit
20 MPH Over Limit	\$90	\$85	\$61	\$45	\$25	\$142	\$119	\$95	\$125 16 - 20 Miles Over Limit
25 MPH Over Limit	\$120	\$115	\$81	\$60	\$40	\$152	\$119	\$95	\$150 21 - 25 Miles Over Limit
30 MPH Over Limit	\$170	\$145	\$111	\$85	\$55	\$182	\$179	\$95	\$175 26 - 30 Miles Over Limit

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 96-F-08

Date Issued: March 26, 1996

Requested by: Representative Francis J. Wald

- QUESTION PRESENTED -

Whether there is a conflict between N.D.C.C. § 40-18-15, which requires a defendant charged with the violation of a city ordinance to waive the right to a jury trial in writing before the case may be heard by a municipal judge, and N.D.C.C. § 40-18-15.1, which provides that a municipal court case may be transferred to district court for jury trial only if the defendant has requested the transfer in writing.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that there is a conflict between N.D.C.C. §§ 40-18-15 and 40-18-15.1 if a defendant does not either waive the right to a jury trial or request to transfer the case to district court. It is my further opinion that this conflict may be resolved in certain home rule cities by providing for a jury trial in municipal court. It is my further opinion that if a jury trial is not available in municipal court, then N.D.C.C. § 40-18-15.1 prevails because its later enactment implicitly amended N.D.C.C. § 40-18-15.

- ANALYSIS -

Trials in municipal courts are regulated, in part, by N.D.C.C. §§ 40-18-15 and 40-18-15.1.

40-18-15. Trial in nonjury cases rising under the ordinances of a city. An action for the violation of a city ordinance for which the right to a jury trial does not otherwise exist or in which the defendant has timely and appropriately waived a right to a jury trial in writing pursuant to rules of the supreme court, may be tried and determined by the municipal judge without the intervention of a jury. In the event of an adverse verdict in a municipal court trial, a defendant may appeal

as provided in section 40-18-19, but a waiver of jury trial in the municipal court proceeding also constitutes a waiver of jury trial in the district court.

40-18-15.1. Transfer to district court - Expenses of prosecution - Division of funds and expenses between city, county, and state. A matter may be transferred to district court for trial only if within 28 days after arraignment the defendant has requested in writing to transfer the case to district court and to exercise the defendant's right to a jury trial. . .

There is no conflict between these statutes if the defendant waives the right to a jury trial in writing pursuant to Rules of the Supreme Court or timely requests in writing to transfer the case to district court and to exercise the right to a jury trial because the defendant will either have a bench trial in municipal court or a jury trial in district court. N.D.C.C. § 1-02-07.

A conflict between these sections may arise if a defendant who is entitled to a jury trial in municipal court neither waives the right to a jury trial nor requests a transfer to district court. In such a case, the defendant is not in district court to receive a jury trial and cannot be given a bench trial in municipal court because the right to a jury trial has not been waived.

An action for the violation of a city ordinance may be tried before a municipal judge without a jury in two instances: (1) where the right to a jury trial does not otherwise exist; or (2) where the defendant has timely and appropriately waived the right to a jury trial in writing pursuant to Rules of the Supreme Court. N.D.C.C. § 40-18-15. A transfer of the case for a district court jury trial may only be obtained upon a timely written demand. N.D.C.C. § 40-18-15.1. One possible interpretation which could reconcile N.D.C.C. §§ 40-18-15 and 40-18-15.1 would be to conclude that a defendant in municipal court who has neither waived the right to a jury trial nor requested a transfer to district court for a jury trial may be given a jury trial in municipal court. Whether this is permitted differs for home rule cities and cities without a home rule charter.

Cities without a home rule charter are not authorized to provide a jury trial in their municipal court. See City of Riverside v. Smuda, 339 N.W.2d 768, 770 (N.D. 1983). Former authority permitting municipal courts to hold jury trials was repealed by the Legislature. 1973 N.D. Sess. Laws ch. 327. "Cities are creatures of statute and possess only those powers and authorities granted by statute or

March 26, 1996

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necessarily implied from an expressed statutory grant." Ebach v. Ralston, 469 N.W.2d 801, 804 (N.D. 1991). The rule of strict construction applies in defining municipal powers. Id. There is no extant statutory law permitting cities generally or municipal courts specifically to hold jury trials. Although statutory language adopted in 1973 which specifically required municipal court cases to be heard without a jury was subsequently modified, 1987 N.D. Sess. Laws ch. 375, § 10, this modification did not revive the former statutory authority for municipal court jury trials. N.D.C.C. § 1-02-16. Therefore, N.D.C.C. §§ 40-18-15 and 40-18-15.1 may not be reconciled by assuming that a defendant who has neither waived the right to a jury trial nor requested transfer to district court may have a jury trial in municipal court in cities without a home rule charter.

However, the charter of a home rule city may contain the power:

To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.

N.D.C.C. § 40-05.1-06(5). A home rule charter and the ordinances made under it supersede state laws to the contrary within the city's jurisdiction and are to be liberally construed for such purposes. N.D.C.C. § 40-05.1-05. The power must be contained in the city's home rule charter and implemented by ordinance in order to supersede state law. Litten v. City of Fargo, 294 N.W.2d 628, 631-32 (N.D. 1980); N.D.C.C. § 40-05.1-06. A prior Attorney General Opinion concluded that a home rule city possessing charter authority to define offenses and provide penalties may, through ordinances, supersede the limits in state law placed upon penalties for violating city ordinances. 1982 N.D. Op. Att'y Gen. 188. Therefore, a home rule city may supersede state law and provide for a jury trial in its municipal court if its charter contains the power found in N.D.C.C. § 40-05.1-06(5) and if it has passed ordinances to implement that power. It is my opinion that the conflict between N.D.C.C. §§ 40-18-15 and 40-18-15.1 can be avoided if a home rule city has provided a jury trial for charges of violating a city ordinance because a defendant who neither waives the right to a jury trial nor timely requests a transfer to district court may obtain a jury trial in municipal court.

In the absence of authority for a municipal court to hold a jury trial, the conflict between N.D.C.C. §§ 40-18-15 and 40-18-15.1 must

be resolved in light of how the right to a jury trial in criminal cases is interpreted under the federal and state constitutions. A preliminary issue is whether it is constitutionally permitted to condition the right to a jury trial for ordinance violations on a timely demand by the defendant.

The right to a jury trial when charged with a crime as found in the Sixth Amendment to the United States Constitution applies to the states through operation of the Fourteenth Amendment to the United States Constitution. Duncan v. Louisiana, 391 U.S. 145, 149 (1968). Petty offenses do not invoke the right to trial by jury under the Sixth Amendment. Baldwin v. New York, 399 U.S. 66, 69 (1970). See also Duncan, 391 U.S. at 159. However, no offense can be deemed petty for these purposes where imprisonment for more than six months is allowed. Baldwin, 399 U.S. at 69. For federal purposes, petty offenses are defined as those punishable by more than six months in prison and a \$500 fine. Duncan, 391 U.S. at 161. The maximum punishment for violation of a city ordinance is imprisonment for 30 days or a fine of \$1,000 or both, except when enlarged by a home rule city. N.D.C.C. § 40-05-06; 1982 N.D. Op. Att'y Gen. 188. Therefore the Sixth Amendment right to a jury trial is generally not implicated in prosecutions for the violation of a city ordinance.

However, the North Dakota Constitution may be interpreted to provide greater protection than the safeguards guaranteed in the federal constitution. City of Bismarck v. Altevogt, 353 N.W.2d 760, 766 (N.D. 1984). Article I, Section 13, of the North Dakota Constitution provides, in part, "the right of trial by jury shall be secured to all, and remain inviolate." The right of trial by jury is preserved as it existed at the time of the adoption of our state constitution in 1889. Altevogt at 764. The North Dakota Supreme Court has held that a defendant is not entitled to a jury trial as a matter of right where the maximum penalty for a crime is 30 days in jail and \$250 fine. State v. Heath, 177 N.W.2d 751, 754 (N.D. 1970). That opinion, however, has been called into question. Altevogt, at 765-66. Altevogt was decided by finding that a former version of N.D.C.C. § 40-18-15 guaranteed a jury trial, and the court specifically stated that it did not decide whether the state constitution guarantees a jury trial in municipal ordinance cases. Id. at 766. However, the court stated in dicta that statutes in place at the time North Dakota adopted its constitutional right to trial by jury may be evidence of what was understood to be the right of trial by jury when the North Dakota Constitution was adopted. Id. at 764-65. The earlier statutes provided for a jury trial in cases where the defendant may be imprisoned for more than 10 days or fined more than \$20. Id. at 765.

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Previously existing law which provided a jury trial for charges of violating a city ordinance required the defendant to demand a jury before commencement of the trial. Altevogt, 353 N.W.2d at 765. However, a felony defendant cannot be required to make a written demand for a twelve person jury, and waiver of the right to a full jury trial by a felony defendant will not be inferred without evidence of a clear and certain waiver. State v. Hegg, 410 N.W.2d 152, 154 (N.D. 1987). Both positions may be reconciled by recognizing the general principle that a defendant's fundamental right to a jury trial is preserved with increasing caution as the offense increases in gravity. State v. Bakke, 498 N.W.2d 819, 821-22 (N.D. App. 1993) (counsel may waive defendant's right to jury for misdemeanor but counsel may not waive jury for felony charge). This implies that less protection is required as the severity of the offense decreases. Further, it is presumed that the Legislature intended to comply with the constitutions of the state and of the United States, and any doubt must be resolved in favor of a statute's validity. State ex rel. Johnson v. Baker, 21 N.W.2d 355, 359 (N.D. 1945); Snortland v. Crawford, 306 N.W.2d 614-26 (N.D. 1981); N.D.C.C. § 1-02-38(1). This presumption is conclusive unless the statute clearly contravenes the state or federal constitutions. Hegg, 410 N.W.2d at 154; State ex rel. Lesmeister v. Olson, 354 N.W.2d 690, 694 (N.D. 1984). Also, a statute will only be found unconstitutional upon concurrence of four of the five justices of the North Dakota Supreme Court. N.D. Const. art. VI, § 4. "One who attacks a statute on constitutional grounds, defended as that statute is by a strong presumption of constitutionality, should bring up his heavy artillery or forego the attack entirely." So. Valley Grain Dealers v. Bd. of County Comm'rs, 257 N.W.2d 425, 434 (N.D. 1977). Therefore, without regard to any future resolution of the constitutional decision avoided in Altevogt, the right of trial by jury, at the time of the adoption of the North Dakota Constitution in 1889, may be defined to mean that a defendant does not have the right to receive a trial by jury absent a demand before the commencement of trial in cases involving the violation of a city ordinance. Altevogt, 353 N.W.2d at 764-65.

Two possibilities must be analyzed without regard to where the Supreme Court may draw the line between a petty offense without the right to trial by jury and an offense for which there is a constitutional right to trial by jury. If there is no right to a jury trial for a particular ordinance violation other than by statute, then the defendant must either take advantage of the right to demand a transfer to district court for jury trial under N.D.C.C. § 40-18-15.1 or receive a bench trial under N.D.C.C. § 40-18-15, and

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thereby avoid the conflict between these sections. In the event that the North Dakota Supreme Court would determine that there is a constitutional right to a jury trial for certain violations of city ordinances, then there is an irreconcilable conflict if a defendant neither waives the right to a jury trial nor timely requests transfer to district court for jury trial.

As noted above, there is no federal constitutional impediment, nor state constitutional impediment, to the Legislature's providing that actions for the violation of a city ordinance may be by jury trial only upon demand by the defendant and not as a matter of right absent such demand. Although statutes relating to the same subject matter must be construed together and should be harmonized if possible to give meaningful effect to each without rendering one or the other useless, Westman v. North Dakota Workers Compensation Bureau, 459 N.W.2d 540, 541 (N.D. 1990), the requirement that the right to a jury trial must be waived in writing under N.D.C.C. § 40-18-15 cannot be reconciled or harmonized with the requirement that a jury trial must be demanded in writing under N.D.C.C. § 40-18-15.1. "If an irreconcilable conflict exists, the latest enactment will control or will be regarded as an exception to or as a qualification of the prior statute." City of Fargo, Cass County v. State, 260 N.W.2d 333, 338 (N.D. 1977). It is not possible to determine that either the requirement of N.D.C.C. § 40-18-15 that the defendant timely and appropriately waive the right to a jury trial in writing pursuant to the North Dakota Supreme Court Rules or the requirement of N.D.C.C. § 40-18-15.1 for a written request to transfer the case to district court and to exercise defendant's right to a jury trial is a particular exception to the other which prevails under N.D.C.C. § 1-02-07. See Northwestern Sav. & Loan Ass'n v. Baumgartner, 136 N.W.2d 640, 643 (N.D. 1965).

Although an implied repeal or implied amendment of a statute is disfavored, that conclusion may be found where a conflict between two statutes is irreconcilable. Birst v. Sanstead, 493 N.W.2d 690, 695 (N.D. 1992). N.D.C.C. § 40-18-15.1 was amended during the 1995 legislative session to specifically require that a defendant in municipal court request in writing to transfer the case to district court and to exercise defendant's right to a jury trial. 1995 N.D. Sess. Laws ch. 388. This statute previously stated that the case was automatically transferred to district court for a jury trial after 28 days if the defendant had not waived in writing the right to a jury trial. Id. N.D.C.C. § 40-18-15 was not amended during the 1995 session. The requirement in N.D.C.C. § 40-18-15 that the defendant waive the right to a jury trial in writing pursuant to North Dakota Supreme Court Rules has been implicitly repealed or amended by the

ATTORNEY GENERAL'S OPINION 96-08

March 26, 1996

Page 7

later enactment of N.D.C.C. § 40-18-15.1. Therefore, in the event that a defendant neither waives in writing the right to a jury trial under N.D.C.C. § 40-18-15 nor timely demands in writing the transfer of the case to district court and to exercise the defendant's right to a jury trial pursuant to N.D.C.C. § 40-18-15.1, and where there is no authority permitting a jury trial in municipal court, it is my further opinion that the requirement that the defendant must request in writing to transfer the case to district court in order to obtain a jury trial under N.D.C.C. § 40-18-15.1 prevails over conflicting terms in N.D.C.C. § 40-18-15.

- EFFECT -

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.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: Edward E. Erickson
Assistant Attorney General

vkk

IN DISTRICT COURT, COUNTY OF CASS, STATE OF NORTH DAKOTA.

City of Fargo,
a Municipal Corporation,

Plaintiff,

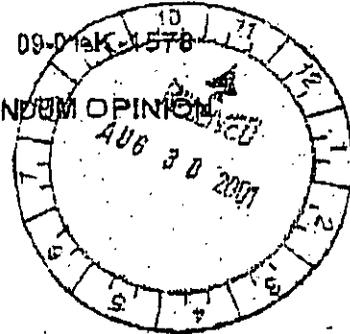
vs.

Harry Cose, Jr.

Defendant.

File No. 09-Dak-1578

MEMORANDUM OPINION



The Defendant in the above entitled matter, by in through his attorney David Garaas of the Garaas law firm, moves the Court to reduce the bond or fine of \$60.00 to \$20.00. The grounds for the motion are that, fines for traffic violations cannot exceed the amount authorized by State law. This appears to be an appeal from a determination by a Municipal Judge pursuant to N.D.C.C. 40-18-19. The Defendant appeals his sentence only.

FACTS

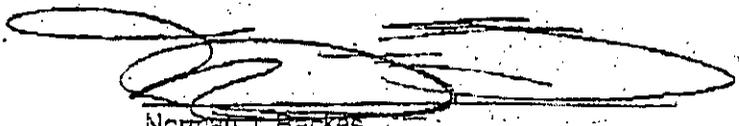
On February 27, 2001 Harry Cose, Jr. was cited for disobeying an automatic signal at the intersection of Main Avenue and 34th Street Southwest. The Defendant was cited under Fargo Municipal Ordinance 08-0405 and was fined \$60.00.

The North Dakota Century Code section 40-05-06 states that for every violation of a City ordinance regulating traffic, the fee established may not exceed the fee set by the equivalent State statute under section 39-06.1-06. The fee is twenty dollars for a moving violation which is defined by section 39-06.1-09. A moving violation includes all violations listed in Chapter 39-10.

EXHIBIT A

The penalty charged for a Municipal ordinance may differ from the penalty charged by the comparable State ordinance City of Fargo v. Little Brown Jug, 468 N.W.2d 392, 396 (N.D. 1991). However, the only difference allowed is where the Municipal penalty is less than the State penalty. A Municipal fine may not exceed the State fine. In this case, the City's fine of \$60.00 exceeds the State's fine of \$20.00 for the same violation. This difference violates State law, and the fine is hereby reduced to \$20.00.

Dated this 29th day of August, 2001:



Norman J. Backes
District Court Judge
East Central Judicial District

STATE OF NORTH DAKOTA
COUNTY OF CASS

IN DISTRICT COURT
EAST CENTRAL JUDICIAL DISTRICT

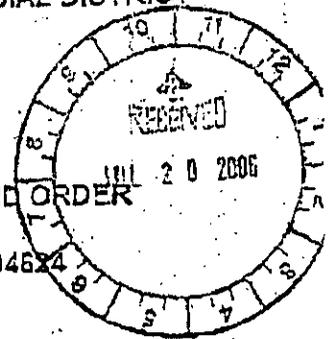
Fargo City Appeal, Plaintiff,

vs.

Robert George Kagan, Defendant.

MEMORANDUM AND ORDER

File No. 09-05-K-04624



On June 19, 2006, a bench trial was held before this Court. The City of Fargo appeared through counsel, Daniel Phillips. The Defendant appeared in person and with counsel, David Garaas. After the presentation of testimony and arguments, the Court found the Defendant committed the moving violation of Disobeying a Traffic Control Device, a violation of Fargo Municipal Code 8-04-03. The Court imposed a fee of \$50.00.

The Defendant moves the Court, pursuant to Rule 3.2, N.D.R.Ct. and N.D.R.Civ.P. 59(a) (b) (6) and (j) to amend, alter, or vacate and enter a new judgment or amend to conform with the decision of the Court made at the trial. Plaintiff filed a Response opposing the motion but taking no position on the motion to amend the clerical aspects of the Judgment.

MOTION FOR A NEW TRIAL

The Defendant alleges the Court determined the Defendant committed the non-moving violation on insufficient evidence to justify the decision or that it is against the law. N.D.R.Civ.P. (59) (D) (6). The Defendant was sixth in a line of cars making a left-hand turn from 45th Street onto 9th Avenue South in Fargo, North Dakota. The

EXHIBIT B

motorcyclist was heading south on 45th Street and was stopped in the far right-hand lane. There was construction on the roadway at the time and the left turn lane was blocked off with the left side of the two lanes for northbound traffic on 45th Street converted into the left turning lane. The Defendant began his left turn on a green arrow which very soon was no longer a green arrow. Once the green light appeared, the left turn vehicles must yield to the southbound vehicles. The cyclist, once the green light appeared, entered the intersection southbound lawfully, and the Defendant and cyclist collided. The Defendant was clearly in violation of Fargo Municipal Code 8-04-03. The Court finds there is sufficient evidence in the record to justify the Court's decision. Further, the Defendant's Motion for a New Trial is DENIED.

MOTION TO REDUCE THE FINE

The Defendant alleges the state law supercedes Fargo Municipal Ordinance as to the amount of the fine that can be charged. As pointed out in Defendant's brief, N.D.C.C. 40-05-06 (2) specifically limits the fee a city may charge for regulating traffic so that the fee may not exceed the limits for equivalent categories of violations under state law. The fine authorized by Fargo Municipal Code 01-03-05 is \$60.00 for disobeying a traffic control device. Under state law, N.D.C.C. 39-06.1-09 the same moving violation of disobeying a traffic control device carries a \$20.00 fee.

Plaintiff cites N.D.C.C. 40-05.1-06 as authority for home rule cities like Fargo to have the authority to adopt and implement ordinances providing for public health and safety. However, N.D.C.C. 39-06.1-09 is specific in nature and N.D.C.C. 40-05.1-06 is general in nature. The home rule authority has been expressly pre-empted by state law which says a municipal fine may not exceed the state fine. Therefore, the Motion to

Reduce the Fine to \$20.00 is GRANTED. The Judgment shall be amended accordingly.

MOTION TO AMEND THE JUDGMENT

The Defendant's Motion to Correct and Amend the Judgment is GRANTED. The Amended Judgment is attached.

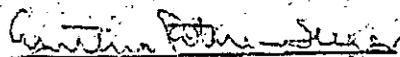
ORDER

Therefore, it is the order of this Court that:

- 1) The Defendant's Motion for a New Trial is DENIED.
- 2) The Defendant's Motion to Reduce the Fine in accordance with state law is GRANTED.
- 3) The Defendant's Motion to Amend and Correct the Judgment is GRANTED.

Dated this 14th day of July, 2006.

BY THE COURT:


Cynthia Rothe-Seeger
District Judge
East Central Judicial District

IN THE DISTRICT COURT FOR CASS COUNTY, NORTH DAKOTA

City of Fargo,

Plaintiff,

Case No. 09-06-K-03185

vs.

Shaina Elizabeth Garaas,

Defendant.

**ORDERS AND JUDGMENT
(NON-CRIMINAL MOVING VIOLATION)**

The above entitled matter came duly on before the undersigned Judge in the Courthouse in the City of Fargo, North Dakota, at 1:30 o'clock p.m. on the 16th day of January, 2007, on the following motions:

1. Defendant's Motion, dated October 11, 2006, to determine that the maximum fine for the speeding violation is \$14;
2. The City of Fargo's Motion to Dismiss Appeal, dated October 20, 2006, based upon its argument that this Court does not have appellate jurisdiction over Defendant's appeal.

David Garaas of the Garaas Law Firm appeared for Defendant Shaina Elizabeth Garaas. City Prosecutor Tristan J. Van de Streek appeared for City of Fargo. The Court considered all of the files and records herein, including the motions, briefs, submissions of the parties, and after hearing the arguments of Counsel, and this Court made oral orders on the record in reference to the motions; and the Defendant relying upon this Court's oral orders has through her attorney admitted the speeding violation.

Now upon all the files, records and proceedings, herein,

FILED CLERK OF DISTRICT COURT

JAN 23 2007

CASS COUNTY, ND

1

EXHIBIT C

OB 4

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

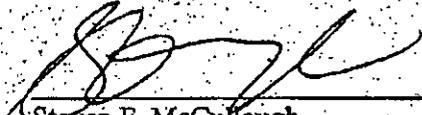
1. That the City of Fargo's Motion to Dismiss Appeal is denied. This Court has jurisdiction over this appeal in that the above named Defendant had appeared in Municipal Court by moving the Municipal Court to setting the maximum fine at \$14.00. This appeal is from a determination of the Municipal Court adverse to the Defendant, and this Court has appellate jurisdiction over the determination of the Municipal Court;

2. That Defendant's Motion to determine that the maximum fine for the speeding violation [as alleged in the citation] is granted. This Court finds persuasive the reasoning of Judge Norman J. Backes in a Memorandum Opinion, dated August 29, 2001, filed in an action entitled City of Fargo, Plaintiff, v. Harry Cose, Jr., Defendant, [Cass County District Court File No. 09-01-K-1578]. This Court determines that a fine charged for a violation of municipal ordinance must be the same, or less, than the fine established by the State of North Dakota; and

3. That this Court accepts Defendant's admission of the speeding violation charged in Citation No. 162334. The Defendant is fined \$14.00 for the speeding violation charged in Citation No. 162334. Defendant's fine of \$14.00 will be paid out of the \$100.00 that the Defendant had previously paid into the Fargo Municipal Court, and \$86.00 of said \$100.00 shall be returned to the Defendant by the Fargo Municipal Court.

Dated this 23 day of January, 2007.

BY THE COURT


Steven E. McCullough

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Stephanie Ann Sauby

DEFENDANTS

City of Fargo

(b) County of Residence of First Listed Plaintiff Cass
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Cass
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Timothy Q. Purdon, Vogel Law Firm, 203 North 3rd Street, Ste 201, Bismarck, ND 58501 (701) 258-7899

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|----------------------------|----------------------------|-----|-----|----------------------------|----------------------------|---|----------------------------|----------------------------|----------------------------|----------------------------|---|----------------------------|----------------------------|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
| <input type="checkbox"/> Citizen of This State

<input type="checkbox"/> Citizen of Another State

<input type="checkbox"/> Citizen or Subject of a Foreign Country | <table border="0"> <tr> <td>PTF</td> <td>DEF</td> <td></td> <td>PTF</td> <td>DEF</td> </tr> <tr> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table> | PTF | DEF | | PTF | DEF | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| PTF | DEF | | PTF | DEF | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | | | | | | | | | | | | | | | | | |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395B) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983

Brief description of cause:
Deprivation of Constitutional Rights Under Color of State Law

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

1-800-659-2223

SB2392

LEXSEE 468 NW 2D 392

City of Fargo, Plaintiff and Appellant v. Little Brown Jug, Defendant and Appellee

Criminal No. 900384

Supreme Court of North Dakota

468 N.W.2d 392; 1991 N.D. LEXIS 72

April 18, 1991, Filed

SUBSEQUENT HISTORY: [**1] As Corrected.**PRIOR HISTORY:** Appeal from the County Court for Cass County, East Central Judicial District, the Honorable Frank L. Racek, Judge.**DISPOSITION:**

REVERSED AND REMANDED.

COUNSEL:

Wayne O. Solberg (argued), City Attorney, Fargo, North Dakota, for plaintiff and appellant.

Vogel, Brantner, Kelly, Knutson, Weir & Bye, Ltd., Fargo, North Dakota, for defendant and appellee; argued by Bruce D. Quick.

JUDGES:

Ralph J. Erickstad, Chief Justice. H. F. Gierke III, Herbert L. Meschke, JJ., and Vernon R. Pederson, S.J., concur. Gerald W. VandeWalle, dissents. Pederson, Surrogate Judge, sitting in place of Levine, Justice, disqualified.

OPINION BY:

ERICKSTAD

OPINION:

[*393] The City of Fargo (Fargo) appeals from the decision of the Cass County Court, dated September 27, 1990, which dismissed criminal charges against Little Brown Jug (LBJ). Fargo asserts the county court erred in its determination that Fargo's city ordinance governing the sale of alcohol to minors was invalid because it superseded state law. We reverse and remand.

During the fall of 1989 and winter [**2] of 1990, the Fargo City Police Department conducted a "sting"

operation intending to uncover unlawful sales of alcoholic beverages to minors by off-sale liquor establishments. LBJ was one of the targeted establishments. The "sting" operation was apparently successful, and LBJ was subsequently charged in municipal court with the offense of selling alcoholic beverages to persons under twenty-one years of age, in violation of section 25-1509(A) of the Fargo Municipal Code.

On April 18, 1990, the case was transferred to Cass County Court upon the request of LBJ. A jury trial was scheduled for September 10, 1990. On September 7, 1990, LBJ filed a motion to dismiss asserting that Fargo's city ordinance was invalid because it violated *section 12.1-01-05 of the North Dakota Century Code*, which provides that crimes defined by state law shall not be superseded by a city ordinance. The county court cancelled the scheduled jury trial and replaced it with a hearing on the motion to dismiss.

At the conclusion of the hearing, the county court issued its ruling from the bench. The court determined that Fargo's ordinance section 25-1509(A) violated *section 12.1-01-05, N.D.C.C.*, by superseding *section [**3] 5-02-06, N.D.C.C.* The court based its decision on the fact that Fargo's city ordinance imposes the penalty of a class B misdemeanor while the applicable state law imposes the penalty of a class A misdemeanor which contains a greater penalty. n1

n1 The county court seems to have relied upon our decision in *City of Fargo v. Glaser*, 62 N.D. 673, 244 N.W. 905 (1932). Our review of Glaser indicates that the decision in that case was based upon the determination that the city had not been granted the authority to regulate the offenses for which the defendant was being prosecuted. In the case at hand, the city has been granted the authority to regulate the use and sale of alcoholic beverages. See § 40-05-01(29), N.D.C.C. There-

fore, we believe the court's reliance on Glaser was misplaced.

[*394] Both parties agree that the offense defined in section 25-1509(A) of the Fargo Municipal Code is consistent with or identical to the offense defined under state law in *section 5-02-06, N.D.C.C.* Both [**4] parties also agree that the principles of double jeopardy would prevent an individual from being tried and convicted under both the city ordinance and the state statute on the basis that the two state the same offense. Our only question on appeal is whether or not a city may enact an ordinance which defines an offense in language similar to state law, but provides for a lesser penalty than the state law. n2

n2 It should be noted that there may be potential constitutional questions concerning violation of the Equal Protection Clauses of our state and federal constitutions. One court has said: "The constitutional flaw in such a statute is that it vests in the charging authorities unbridled discretion to charge an offender with either of two crimes, resulting in different sentences for the same offense." *City of Seattle v. Hogan, 53 Wash. App. 387, 390, 766 P.2d 1134, 1136 (1989)* (citing *State v. Mason, 34 Wash. App. 514, 516, 663 P.2d, 137 (1983)*). In *Hogan*, the defendant had been charged with a city ordinance identical to state law except that the city ordinance resulted in a higher penalty. While the Washington Court of Appeals determined that this resulted in violation of equal protection principles, it also determined that the appropriate remedy was to reduce the sentence to the lower state penalty. We decline to decide the Equal Protection Clause issues at this time. We do not believe those issues have been adequately raised and, even if we were to conclude that such a violation existed, LBJ would likely not benefit from such a holding because LBJ would not be immunized from prosecution. As LBJ is currently being charged with the offense which has the lesser of the two penalties, it has not been harmed.

[**5]

Fargo has charged LBJ with violating section 25-1509(A) of the Fargo Municipal Code which reads:

"25-1509. Restrictions on sale, service or dispensing of alcoholic beverages. --

A. No licensee, his agent or employee, shall sell, serve or dispense any alcoholic beverage to a person under twenty-one years of age; and no licensee, his agent or employee, shall permit any person under twenty-one years of age to be furnished with any alcoholic beverage upon the licensed premises."

A violation of section 25-1509(A), of the Fargo Municipal Code, results in a class B misdemeanor which carries the penalty of a fine not to exceed \$ 500, or imprisonment not to exceed 30 days, or both such fine and imprisonment.

The state regulates the same offense under *section 5-02-06, N.D.C.C.*, the pertinent part of which reads:

"5-02-06. Prohibitions as to persons under twenty-one years of age -- Penalty -- Exceptions. Except as permitted in this section, any licensee who dispenses alcoholic beverages to a person under twenty-one years of age, or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor."

[**6]

A violation of *section 5-02-06, N.D.C.C.*, results in a class A misdemeanor which carries the penalty of a maximum fine of \$ 1,000, or imprisonment for up to one year, or both such fine and imprisonment.

Our question is whether or not section 25-1509(A) of the Fargo Municipal Code violates *section 12.1-01-05, N.D.C.C.*, which reads:

"12.1-01-05. Crimes defined by state law shall not be superseded by city or county ordinance or by home rule city's or county's charter or ordinance. No offense defined in this title or elsewhere by law shall be superseded by any city or county ordinance, or city or county home rule charter, or by an ordinance adopted pursuant to such a charter, and all such offense definitions shall have full force and effect within the territorial limits and other jurisdiction of home rule cities or counties. This section shall not preclude any city or county from enacting any ordinance containing penal language [*395] when otherwise authorized to do so by law."

This is not the first time we have had to determine whether or not a city ordinance supersedes a state statute in violation of section 12.1-01-05. *City of Bismarck v. Schoppert, 450 N.W.2d 757 (N.D. 1990)*; [**7] *City of Dickinson v. Gresz, 450 N.W.2d 216 (N.D. 1989)*; *City of Bismarck v. Nassif, 449 N.W.2d 789 (N.D. 1989)*; *City of Grand Forks v. Cameron, 435 N.W.2d 700 (N.D. 1989)*; *City of Dickinson v. Mueller, 261 N.W.2d 787 (N.D. 1977)*; See *City of Bismarck v. Hoopman, 421 N.W.2d 466 (N.D. 1988)*; *City of Valley City v. Berg, 394 N.W.2d 690 (N.D. 1986)*. Our decisions in *Schoppert, Gresz,*

Nassif, Cameron, and Mueller focused upon alleged differences between the definition of the offense provided by the city ordinance and the definition of the offense provided by state law. This is our first opportunity to consider whether or not an identically defined offense with a differing penalty violates *section 12.1-01-05, N.D.C.C.*

The powers of a municipality are governed by Chapter 40-05, *N.D.C.C. Section 40-05-01(29)*, *N.D.C.C.*, which grants municipalities the power to regulate the use and licensure of alcoholic beverages, reads:

"40-05-01. Powers of all municipalities. The governing body of a municipality shall have the power:

29. Alcoholic beverages. To regulate [**8] the use and to regulate and license the sale of alcoholic beverages subject to the provisions contained in title 5."

We have upheld a city's regulation of the sale of alcohol to minors similar to section 25-1509(A) of the Fargo Municipal Code. See *Mueller*, 261 N.W.2d at 789. We recognize that the issue here was not an issue in *Mueller* or the other cases previously cited herein. The question in this case is whether or not Fargo may enact an ordinance which provides for a penalty less than a similar state law. The answer is that its ordinance must provide for a lesser penalty because the city is limited to a lesser penalty for all offenses than what the state law on this subject provides.

The regulation of the use and sale of alcohol by a municipality is limited to imposing a penalty equal to a class B misdemeanor. See *section 40-05-06, N.D.C.C.*, which reads:

"40-05-06. City fines and penalties limited.

1. Except as provided in subsections 2 and 3, the fine or penalty for the violation of any ordinance, resolution, or regulation of a city may not exceed five hundred dollars, and the imprisonment may not exceed thirty days for one offense."

We have said:

[**9]

"Statutes relating to the same subject matter shall be construed together and should be harmonized, if possible, to give meaningful effect to each, without rendering one or the other useless."

Westman v. N.D. Workers Comp. Bureau 459 N.W.2d 540, 541 (N.D. 1990). See also, *Miles Homes v. City of Westhope*, 458 N.W.2d 321, 324 (N.D. 1990); *Hospital Services, Inc. v. Brackey*, 283 N.W.2d 174, 177 (N.D. 1979). We have also recognized that implicit repeals are

not favored. E.g. *State By Workmen's Comp. Bureau v. Clary*, 389 N.W.2d 347, 349 (N.D. 1986). In order to overcome the presumption against implicit repeals, it must be shown that the conflict between the two statutes cannot be reconciled. Id.

The legislature has expressly granted to a municipality the power to regulate the use and sale of alcoholic beverages. See § 40-05-01(29), N.D.C.C. The legislature has also limited the penalty which may be imposed by a municipality. See § 40-05-06(1), N.D.C.C. In order to harmonize the statutes granting and limiting the power of a municipality with section 12.1-01-05, N.D.C.C., and to avoid an implicit [**10] repeal of that power to regulate the use and sale of alcoholic beverages, we conclude that the prohibition in section 12.1-01-05, N.D.C.C., against a municipal ordinance superseding state law, does not prevent a municipality from enacting an ordinance with a penalty which differs [*396] from the penalty which could be imposed under similar state law when, as here, the city has enacted an ordinance authorizing imposition of up to the maximum penalty the city may impose under state law, and the enactment is in an area of law in which the city is authorized to engage in regulation through the enactment of an ordinance.

Although we conclude that the penalty of a municipal ordinance may differ from the penalty imposed by the state law, our decision in this case is limited to those situations in which the municipality authorizes imposition of up to the maximum allowable municipal penalty which is lesser than the state law penalty for an equivalent statute.

For the reasons stated in the opinion, we reverse and remand for a trial on the merits.

DISSENT BY:

VANDEWALLE

DISSENT:

VANDEWALLE, Justice.

I agree with much of what is said in the majority opinion concerning harmonizing statutes, n1 but because I believe the [**11] constitutional issue referred to in footnote 2 of that opinion is so significant, I must respectfully dissent.

n1 We are called upon to resolve what apparently is a legislative oversight and thus must attempt, within certain judicially prescribed maxims, to divine what the Legislature would do if it were aware of the conflict.

Little Brown Jug has no standing to raise the constitutional issue of equal protection. Nevertheless, it is our obligation to construe statutes to avoid a constitutional confrontation. E.g., *Grace Lutheran Church v. N.D. Employment*, 294 N.W.2d 767 (N.D. 1980). It appears to me that the majority opinion would lead to a conclusion that section 5-02-06, NDCC, is unconstitutional when a licensee in a city is charged in State court with dispensing alcoholic beverages to a person under the age of twenty-one years, at least to the extent that the penalty for such violation exceeds \$ 500 and thirty days in jail. That would be an example of the tail wagging the dog and surely could [**12] not have been the intent of the Legislature. n2

n2 In *City of Seattle v. Hogan*, 53 Wash.App. 387, 766 P.2d 1134 (1989), it was the City penalty which exceeded that prescribed for a violation of the State law. The Washington court ordered the penalty for violation of the city ordinance reduced. Here the effect of the majority opinion could be to reduce the State penalty in an instance in which a city licensee raises an equal protection argument when prosecuted in State court.

Section 5-02-06 is a specific statute dealing with a specific crime, the sale of alcoholic beverages to persons under the age of twenty-one, and it must take precedence over the more general authority of the city to regulate the sale of alcoholic beverages contained in section 40-05-

01(29), NDCC, or over section 40-05-06 limiting to a fine of \$ 500 and thirty days in jail the authority of a city to establish a penalty for violation of its ordinances. Therefore I believe we should conclude that the authority of a city [**13] to prosecute a licensee for the violation of the ordinance has been impliedly repealed by section 12.1-01-05, NDCC, a position I recognize finds little favor in the court, e.g., *State by Workmen's Comp. Bureau v. Clary*, 389 N.W.2d 347 (N.D. 1986). However, where the conflict between two statutes is irreconcilable implied repeals are recognized. Id. The fundamental test is the intent of the Legislature. *Herman v. Magnuson*, 277 N.W.2d 445 (N.D. 1979). Here it appears to me the specific legislative intent is that the act of selling alcoholic beverages to a person under the age of twenty-one be punished as a class A misdemeanor which results in a maximum fine of \$ 1,000 and imprisonment of one year. That purpose is superior to the indeterminate authority granted to a city to regulate the sale of alcoholic beverages within the city. The construction reached by the majority opinion has the potential to turn that purpose on its head.

In the alternative, we should conclude that for the purpose of enforcing a city ordinance akin to section 5-02-06, there is [*397] an implied amendment of section 40-05-06, NDCC, and in the event of a sale of alcoholic [**14] beverages to a person under the age of twenty-one the city must prescribe a maximum penalty of \$ 1,000 and one year imprisonment. Either of those two constructions avoids the equal protection issue inherent in the majority opinion.