

N.D.A.G. Letter to Hanson (March 1, 1988)

March 1, 1988

The Honorable Robert E. Hanson
State Treasurer
State Capitol
Bismarck, ND 58505

Dear Mr. Hanson:

Thank you for your letter of November 16, 1987, in which you request my opinion as to whether or not your deputy may act on your behalf on the various boards and commissions of which you are a member. I apologize for the delay in responding.

This same issue was addressed in an October 1, 1987, letter to Secretary of State Ben Meier. In the letter to Mr. Meier, it was stated that the generally accepted rule is that the deputy is a substitute for the principal empowered to act in the name of and on behalf of the principal in all matters in which the principal may act. With respect to the principal, the deputy is in effect an agent and the acts of the deputy are considered the acts of the principal for which the latter is responsible. The principal is responsible for the acts of the deputy and may remove the deputy at his pleasure. 63A Am. Jur.2d Public Officers and Employees §§ 567, 570 (1984).

When the legislature has desired to prohibit deputies or designees from replacing their principals on boards, it has specifically stated so. See, e.g., N.D.C.C. § 15-01-01 (Board of University and School Lands). Thus, it is the position of this office that deputies may represent their principals on boards and commissions unless statutorily prevented from doing so.

Having set forth the general rule governing this issue, I will briefly discuss its application to the various boards/commissions of which the State Treasurer is a member. In your letter you identified the following boards of which you are a member:

1. State Canvassing Board (N.D.C.C. § 16.1-15-33);
2. State Board of Tax Equalization (N.D.C.C. § 57-13-01);
3. State Board of University and School Lands (N.D.C.C. § 15-01-03, N.D. Const. Art. XI, § 3);
4. State Historical Society Board (N.D.C.C. § 55-01-01);
5. Teachers Fund for Retirement (N.D.C.C. § 15-39.1-05); and
6. State Investment Board (N.D.C.C. § 21-10-01).

As indicated above, the Legislature has provided in N.D.C.C. § 15-01-01 that members of the Board of University and School Lands may not be represented by a deputy. Therefore, the deputy state treasurer is not authorized to represent you on the Land Board. With

respect to the other boards of which you are a member, there does not exist statutory language limiting the authority of your deputy to act on your behalf.

It is my opinion, therefore, that the deputy treasurer is authorized to represent your interests on the various boards and commissions, other than the Land Board, of which you are a member. This includes the ability to vote on substantive matters presented to the boards and commissions.

I trust that this discussion will be of assistance to you.

Sincerely,

Nicholas J. Spaeth

vkk