

**N.D.A.G. Letter to Lamb (May 27, 1986)**

May 27, 1986

Mr. Joseph S. Lamb  
Executive Vice President  
Chief Operating Officer  
Bank of North Dakota  
700 East Main  
P.O. Box 5509  
Bismarck, ND 58502-5509

Dear Mr. Lamb:

I am writing you as a follow up to my letter of April 23, 1986. Specifically, I wish to discuss the last question of your letter of February 27, 1986, concerning the availability of state indemnification for employees of the Bank of North Dakota.

I have reviewed the Bank of North Dakota policy with respect to the indemnification of bank directors, officers, and employees. This policy provides for the indemnification by the Bank of North Dakota of any person who was or is a party or is threatened to be made a party to any civil, criminal, or administrative action by reason of the fact that such person is or was a director, officer, or employee of the bank. Such indemnification exists with respect to expenses (including attorneys fees), judgments, fines, and amounts paid in settlement incurred by the person in connection with the action or proceeding. The policy further states that indemnification exists only where the person acted in good faith and in a manner reasonably believed to be in the best interests of the bank.

The current status of North Dakota law on the subject of state indemnification for state officials and employees is unclear and is in need of legislative clarification. This conclusion applies equally with respect to Bank of North Dakota officers and employees. I am aware of the argument that the limited form of indemnification provided by N.D.C.C. § 6-03-02.1 may be available to the Bank as a result of a particular interpretation of N.D.C.C. § 6-09-02. However, again, the legislation is ambiguous and unclear.

The question of the availability of indemnification for all state employees and officials is currently under review by this office. We have received numerous inquiries from various state officials and employees as to this particular subject. Current statutes of this state do not provide very many answers to the numerous questions as to indemnification. We are attempting to identify the issues and provide those answers which are currently available. Suggested legislation may also be presented where such legislation is needed to resolve the questions and disputes currently being raised throughout the state.

Sincerely,

Nicholas J. Spaeth

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