

**LETTER OPINION
2002-L-40**

July 12, 2002

Honorable Alvin A. Jaeger
Secretary of State
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Secretary of State Jaeger:

Thank you for your letter requesting my opinion on whether you are permitted to issue a contractor's license to an applicant who is a minor under state law. As you note, the chapter of law dealing with contractor licensing is silent on this issue. See N.D.C.C. ch. 43-07. However, you ask whether any other provisions of state law would prevent you from issuing a contractor's license to a minor.

A minor is defined in state law as a person under 18 years of age. See N.D.C.C. § 14-10-01. Section 43-07-09, N.D.C.C., provides in part that "[w]ithin fifteen days from the date of application, the [Secretary of State] may investigate and determine each applicant's fitness to act in the capacity of contractor as defined in this chapter, and no license may be issued to such applicant until the [Secretary of State] receives all documentation necessary to obtain a license and the appropriate fee." A contractor is defined in N.D.C.C. § 43-07-01(1) as "any person engaged in the business of construction, repair, alteration, dismantling, or demolition of . . . buildings . . . and every other type of structure, project, development, or improvement coming within the definition of real or personal property, including the construction, alteration, or repair of property to be held either for sale or rental, and shall include subcontractor, public contractor, and nonresident contractor."

If these were the only pertinent statutes, there would be no compelling argument against licensing a minor, assuming that you determined the applicant was otherwise fit to act in the capacity of a contractor.¹ However, N.D.C.C. § 14-10-09 provides, in part, that "[a]

¹ Generally, a minor may disaffirm most contracts, see, e.g., N.D.C.C. §§ 14-10-10, 14-10-11, except, for example, those for necessities. Accordingly, it might be argued that based on the regulatory policy of protecting consumers and businesses from contractors (who are minors) disaffirming their contracts, such contractors should not be licensed.

person under the age of eighteen may not make a contract relating to real property or any interest therein or relating to any personal property not in that person's immediate possession or control." This statute has not been construed either by this office or by the North Dakota Supreme Court in this particular context.²

In Moran v. Williston Cooperative Credit Union, 420 N.W.2d 353 (N.D. 1988), however, the North Dakota Supreme Court determined that where a minor signed promissory notes violating this statute, the notes were void rather than voidable, as would be the case with most contracts entered into by a minor unless disaffirmed. See N.D.C.C. §§ 14-10-11 and 14-10-10 (contracts not void, but voidable). In Moran, a minor signed promissory notes to a credit union and the proceeds were used to purchase livestock for the minor's father's livestock operation. Id. at 354. Because the minor received neither the proceeds of the loans nor the livestock, the court determined that N.D.C.C. § 14-10-09 applied in that the contracts related to personal property not in the minor's immediate possession or control and, thus, were void. Id. at 356.

In the present case, the issue more squarely is whether a minor entering into building construction, repair, or alteration contracts under the authority of N.D.C.C. ch. 43-07 would be making contracts "relating to real property or any interest therein." N.D.C.C. § 14-10-09. If so, the contracts would be void. Moran, supra. It would seem to make little sense to license a contractor who could not enter into valid construction contracts that relate to real property.

The term "relate" has been defined to mean "[t]o stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with." Black's Law Dictionary 1288 (6th ed. 1990). Accord Central States Foundation v. Balta, 590 N.W.2d 832, 837 (Neb. 1999) (the phrase "relating to" should be read broadly and should be interpreted as being comprehensive of the subject indicated). As noted above, by statutory definition a contractor is a person engaged in the business of construction, repair, or alteration of buildings and other facilities and "every other type of structure, project, development, or improvement coming within the definition of real or personal property." N.D.C.C. § 43-07-01(1). Thus, by definition, as well as the nature of the business, being a contractor pertains to, refers, or brings into association or connection with real property. Consequently, in most conceivable instances, a building contractor enters into contracts relating to real property within the meaning of N.D.C.C. § 14-10-09.

However, this argument is undercut by N.D.C.C. § 14-10-13 which provides that a minor cannot disaffirm an obligation entered into "under the express authority or direction of a statute" such as N.D.C.C. ch. 43-07.

² In 1972 N.D. Op. Att'y Gen. 332 this office determined N.D.C.C. § 14-10-09 required a guardian's execution of a mortgage for the estate of a minor.

LETTER OPINION 2002-L-40

July 12, 2002

Page 3

In enacting N.D.C.C. §§ 14-10-09 and 43-07-09, it is presumed that each statute was intended to be effective in its entirety, a reasonable result was intended, and a result feasible of execution was intended. N.D.C.C. § 1-02-38(2), (3), and (4). Issuing a contractor's license to a minor would be a useless act if the minor could not enter into building contracts, a result the Legislature in all likelihood did not intend. See State ex rel. Clayburgh v. American West Community Promotions, Inc., 645 N.W.2d 196 (N.D. 2002) (the Legislature is presumed not to intend idle acts); N.D.C.C. § 31-11-05(23). Therefore, it is my opinion that although N.D.C.C. ch. 43-07 does not contain a minimum age for obtaining a contractor's license, N.D.C.C. § 14-10-09 would not permit a minor to enter into a contract for building construction, repair, or alteration relating to real property, and it would implicitly prohibit you from issuing a contractor's license to a minor applicant.

Sincerely,

Wayne Stenehjem
Attorney General

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