

**N.D.A.G. Letter to Elhard (Feb. 28, 1985)**

February 28, 1985

Mr. Terry W. Elhard  
McIntosh County State's Attorney  
P. O. Box 248  
Ashley, North Dakota 58413

Dear Mr. Elhard:

Thank you for your letter of February 14, 1985, regarding a possible conflict of interest in which an individual serves as both a county commissioner and a board member and treasurer of a local Farmers Union Oil Company which transacts business with the county.

In discussing this issue, a statutory law and the common law of North Dakota must be addressed. An examination of the Century Code reveals no specific prohibition for an individual serving as a county commissioner and also serving as a board member and treasurer of a local business. However, there is a statute in North Dakota which prohibits county commissioners from being interested in any contract in which the county is a party. N.D.C.C. § 11-09-47 states, in part, as follows:

11-09-47. INTEREST IN CONTRACTS BY OFFICERS AND EMPLOYEES PROHIBITED. No member of the board of county commissioners . . . shall be interested, directly or indirectly, in any contract to which the county is a party, either as principal, surety, or otherwise. No such officer or employee or his partner, agent, servant, employee, or the firm of which he is a member, shall purchase from or sell to the county any real or personal property, nor shall he be interested, directly or indirectly, in any work or service to be performed for the county or in its behalf. Any contract made in violation of the provisions of this section shall be void.

The question as to whether this particular county commissioner is directly or indirectly involved in a contract to which a county is a party is a question of fact which this office is not authorized to address in terms of an attorney general's opinion. However, from a reading of your letter, if the county transacts business with Farmers Union Oil Company in the form of sales of fuel, oil, and miscellaneous supplies as well as servicing county vehicles and equipment, the particular county commissioner may be interested in a contract to which the county is a party. Therefore he would be in violation of N.D.C.C. § 11-09-47.

The question of whether this county commissioner's actions violate N.D.C.C. § 12.1-13-03 is also a question of fact. There are no cases directly on point interpreting N.D.C.C. § 12.1-13-03. However, the case of State v. Robinson, 2 N.W.2d 183 (N.D. 1942) dealt with a violation of § 98-29, Compiled Laws N.D. 1913 which is the forerunner of N.D.C.C. §

12.1-13-03. An understanding of this particular case may be helpful in determining whether there has been a violation of N.D.C.C. § 12.1-13-03.

Sincerely,

Nicholas J. Spaeth

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