

N.D.A.G. Letter to White Eagle (June 30, 1986)

June 30, 1986

Ms. Maureen White Eagle
City Attorney
423 Sixth Street
P.O. Box 1048
Devils Lake, ND 58301

Dear Ms. White Eagle:

Thank you for your letter of June 16, 1986, inquiring as to the ability of a member of a city governing body to become personally interested in the construction of a city building.

North Dakota law, as found at N.D.C.C. Ch. 48-02, outlines various provisions and prohibitions involving the construction of public buildings. Included within these provisions is N.D.C.C. § 48-02-12. This particular statute prohibits members of a governing body from becoming pecuniarily interested or concerned directly or indirectly in any public contract entered into by such a board. Prior opinions of this office have interpreted the scope of this particular statute to be restricted to N.D.C.C. Ch. 48-02. In other words, the absolute prohibition contained within N.D.C.C. §48-02-12 applies to the alteration, repair, or construction of public buildings.

According to your letter, the particular construction contract involved involves the construction of a new fire hall within the city. It would appear, therefore, that N.D.C.C. Ch. 48-02 applies and, as such, the prohibition contained within N.D.C.C. §48-02-12 is applicable.

As a result, no member of the city governing body may become pecuniarily interested or concerned in such a contract. This particular statute does not provide an escape from its prohibition where a disclosure is made and the remaining members of the governing body vote in favor of allowing the member to maintain his personal financial interest in the contract. Instead, this prohibition appears to be absolute.

Sincerely,

Nicholas J. Spaeth

cv