

N.D.A.G. Letter to Vogel (July 31, 1989)

July 31, 1989

Honorable Sarah Vogel
Commissioner of Agriculture
Department of Agriculture
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Commissioner Vogel:

Thank you for your May 9, 1989, letter asking whether a discrepancy in House Bill No. 1621, 1989 N.D. Sess. Laws ch. 394, can be "corrected" without waiting until the 52nd Legislative Assembly can amend the statute in 1991.

N.D.C.C. §§ 46-03-10 and 46-03-11 authorize the Legislative Council and the Secretary of State to correct errors of spelling, grammar, punctuation, and other clerical or ministerial errors in laws prior to publication. However, the discrepancy at issue at House Bill No. 1621 does not appear to be one of these types of errors.

It appears that House Bill No. 1621, as first introduced, provided that a debtor must provide the sheriff, the register of deeds, and all parties with an accurate legal description of the property to be redeemed at least "ten business days" before the scheduled sheriff's sale. This "ten business day" period was included in both the section setting forth the notice requirement (now section 4 of the session law) and the sample notice provision (now section 3 of the session law). Senator Brokaw then proposed an amendment to the bill, changing "ten business days" to "fifteen business days" in what is now section 4 of the session law. No similar change was made in what is now section 3 of the session law (the sample notice provision). Therefore, the discrepancy you discussed apparently occurred when this amendment was made in committee and only one of the references in the bill to a ten day period was amended from ten days to fifteen days. Because the error is not an error in spelling, grammar, or punctuation, or a similar clerical error, neither the Legislative Council nor the Secretary of State may correct this discrepancy pursuant to N.D.C.C. §§ 46-03-10 or 46-03-11.

A court, however, would be likely to correct this discrepancy in any case in which this issue is appropriately presented. The North Dakota Supreme Court has held that when it is clear on the face of a statute that an error has been made in the use of words, number, grammar, punctuation, or spelling, the courts, in construing and applying the statute, will correct the error to give effect to the intent of the Legislature as gathered from the entire act. Schnaible v. City of Bismarck, 275 N.W.2d 859, 867 n.2 (N.D. 1979); City of Dickinson v. Thress, 290 N.W. 653 (N.D. 1940). Applying this rule of law and given the legislative history discussed above, I expect that a court would determine that the

reference in 1989 N.D. Sess. Laws ch. 394, § 3, to the notice period should read fifteen business days.

This result is also likely based upon principles of statutory interpretation applicable to decide the appropriate language to be enforced when there is a conflict in a statute. N.D.C.C. § 1-02-08 provides that "[e]xcept as otherwise provided in section 1-02-07, whenever, in the same statute, several clauses are irreconcilable, the clause last in order of date or position shall prevail." A court called upon to decide the number of days required for notice pursuant to House Bill No. 1621 would, therefore, in all probability find that the fifteen business day notice would be required because the fifteen business day clause is last in order of date (of amendment) and position within the bill itself.

In summary, there appears to be no procedure for correcting the discrepancy in House Bill No. 1621 administratively. However, it appears likely that a court in any case concerning the statute would hold that the fifteen business day language would prevail.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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