

N.D.A.G. Letter to Hoffner (Aug. 2, 1988)

August 2, 1988

Mr. S. F. Hoffner
Executive Director
North Dakota Centennial
Commission
2204 East Broadway Avenue
Bismarck, ND 58501

Dear Mr. Hoffner:

Thank you for your letter of June 8, 1988, which we received on July 11, 1988. You request an opinion regarding the authority of the North Dakota State Highway Department to expend its funds so as to provide for the acquisition and installation of various traffic control devices to be located throughout Bismarck-Mandan and the State Capitol Grounds, and to provide bus service during the July 4 centennial celebration in Bismarck-Mandan. You also asked my opinion as to whether other state agencies would be able to provide funding and personnel in support of the same event.

You ask four specific questions regarding the Highway Department, the first of which relates to the Highway Department installing temporary traffic signals on State Street (U.S. Highway 83) and at east entrance to the State Capitol Grounds, and at the intersection of Third Street and Highway 1806 in Mandan.

The State Highway Commissioner is responsible for the installation of all traffic control devices upon highways under his jurisdiction. N.D.C.C. § 39-13-07. This authority is limited to highways constituting part of the designated state highway system, which would include State Street and the intersection of Third Street and Highway 1806 in Mandan. N.D.C.C. § 24-01-02. The authority to install traffic control devices on streets and highways that are not a part of the designated state highway system rests with the local road authorities. N.D.C.C. § 39-13-07. It would therefore be legally permissible for the North Dakota State Highway Department to purchase and install traffic signals, on a temporary basis, on State Street (U.S. Highway 83) at its junction with the east entrance to the State Capitol Grounds as well as the intersection of Third Street and Highway 1806 in Mandan. Whether the Highway Department's budget would permit such an expenditure is not known to us and would have to be answered by Highway Department officials.

Your second question asks if the Highway Department may purchase barricades, gates, and flashing lights for the State Capitol Grounds.

With respect to streets, roadways, and parking areas on the capitol grounds, the State Highway Department may authorize the Director of Institutions to purchase and place devices necessary to the control of traffic movement on the grounds. N.D.C.C.

§ 39-10-50(5). The barricades and other traffic devices to which you refer would control traffic movement on the state capitol grounds and, therefore, would be covered by the provisions of N.D.C.C. § 39-10-50(5). N.D.C.C. § 39-10-50(5) provides, in relevant part:

39-10-50. Additional parking regulations.

5. The state highway department, with respect to streets, roadways, and parking areas of any state charitable or penal institution and on the state capitol grounds, may authorize the purchase and placement by the director of institutions of official traffic-control devices prohibiting or restricting the stopping, standing, or parking of vehicles. The placement of signs pursuant to this section must be done when, in the department's opinion, the stopping, standing, or parking is dangerous or would unduly interfere with the free movement of traffic, especially the free flow of traffic required for proper fire protection.

N.D.C.C. § 39-10-50(5) splits the authority for the installation of traffic control devices on the capitol grounds between the Highway Department and the Director of Institutions. The Legislature apparently recognized that both agencies have authority and responsibility in this situation under other statutes. The Director of Institutions is charged with the custody and maintenance of the State Capitol Grounds. N.D.C.C. § 54-21-18. The Highway Commissioner is responsible for the adoption of a manual for uniform traffic control devices, a manual that would apply to the capitol grounds. See N.D.C.C. § 39-13-06. Because of this joint responsibility and authority, N.D.C.C. § 39-10-50(5) recognizes and establishes that both agencies must cooperate in purchasing, placing, and installing traffic control devices on the state capitol grounds. Under the statute, the Highway Department is authorized to determine (in accordance with the department's manual for uniform traffic control devices) where traffic control devices should be placed to provide for safe, free movement of traffic on the capitol grounds. The Director of Institutions, in cooperation with the Highway Department, then purchases and installs those devices and other traffic control devices the agencies find appropriate.

To answer your specific question, therefore, the Highway Department may not purchase traffic control devices for the State Capitol Grounds. The Highway Department may determine whether such devices should be installed for safety reasons or to control traffic. It is then within the authority and responsibility of the Director of Institutions to purchase and install those devices deemed necessary by the Highway Department, as well as any other traffic control devices the Director of Institutions and the Highway Department find to be appropriate.

Your third question asks if the Highway Department may purchase stop signs, parking signs, and 15 designated parking lots and other directional signs. I assume your question relates to the purchase and installation of the traffic control devices on the parking lots or adjacent thereto.

Your question is not specific as to where these traffic control devices are to be located. Generally, my response to your first question would be controlling; i.e., the Highway Commissioner may provide for the installation of traffic control devices only on highways that are on part of the state highway system and only within his budgetary constraints. If the location of the traffic control devices encompassed by your question are not on a state highway, the Highway Commissioner would lack the authority to install such devices.

Lastly, you ask if the Highway Department may provide for shuttle bus service between the State Capitol Grounds and Bismarck-Mandan. The Legislature has previously addressed this matter and has limited the Highway Commissioner's ability to engage in busing activities. N.D.C.C. § 24-04-03, in its pertinent part, provides:

24-04-03. Feeder roads and rural transportation assistance programs -- Commissioner may cooperate with federal government. . . . The commissioner shall not engage in or provide state funds for the operation of any public bus transportation system except by contract with a local governmental entity or a private operator and shall expend no revenue derived from gas tax or motor vehicle licensing in the establishment or operation of such public bus transportation system.

The foregoing statutory provision precisely addresses your question. The Legislature has denied the Highway Commissioner the authority to participate in any public busing service, except by contract with a city or county, and then only if the undertaking is financed without gas tax revenues or motor vehicle registration fees. The Highway Department can legally participate in a shuttle bus undertaking only within the stated limitations.

Finally, you ask whether other state agencies may participate, through funding and personnel time, in the July 4, 1989, celebration events. It is not possible to respond definitively to this question without knowing the specific nature of the desired participation as well as the status of the agency's budget appropriations. Depending upon these variables, other agencies may be able to become involved in the centennial celebration.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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