

N.D.A.G. Letter to Slorby (Nov. 19, 1990)

November 19, 1990

Mr. Tom P. Slorby
Ward County State's Attorney
Ward County Courthouse
Minot, ND 58701

Dear Mr. Slorby:

Thank you for your October 25, 1990, letter concerning the seal of Ward County and its resemblance to the Great Seal of the State of North Dakota.

N.D.C.C. § 11-11-09 states that the board of county commissioners shall design a county seal "with such emblems and devices as it may think proper." There is nothing in this statute addressing the resemblance of a county seal to the state's Great Seal.

N.D.C.C. § 54-02-01 discusses the Great Seal of the State of North Dakota. The actual design of the seal is found at N.D. Const. art. XI, § 2. N.D.C.C. § 54-02-01 provides it is a class B misdemeanor offense to use or reproduce the seal in any advertisement or for any commercial purpose.

The prohibition found within N.D.C.C. § 54-02-01 concerning use of the seal for commercial or advertising purposes is not applicable to the Ward County seal. You have not indicated that the Ward County Commission contemplates using the Ward County seal as an advertisement or for commercial purpose as those terms are defined by N.D.C.C. § 54-02-01. Instead, your concern is that the similarities between the Ward County Seal and the Great Seal are legally prohibited. There are previous Attorney General letter opinions which conclude that a "close imitation" or a substantial use of the Great Seal is not a permitted use. Letter from Attorney General Elect Robert O. Wefald to Tom Brooks, December 15, 1980; Letter from Attorney General Allen I. Olson to Secretary of State Ben Meier, September 5, 1979; Letter from Chief Deputy Attorney General Gerald W. VandeWalle to Albert A. Watrel, August 26, 1977. In those situations, however, this office deferred to the Secretary of State's judgment on the issue of the use of a seal which closely resembles that of the Great Seal of the State of North Dakota. It is the Secretary of State who is the custodian of the Great Seal. N.D.C.C. § 54-02-01(1).

I believe the analysis and conclusion of these previous letter opinions should be followed in this case as well. Although the use of a portion of the Great Seal by Ward County is not addressed directly by N.D.C.C. § 54-02-01, it is the Secretary of State as custodian of the Great Seal that must address any partial reproductions or uses of the seal. A legal opinion cannot be issued because the facts in each particular case involving portions of the Great Seal would differ from case to case.

Therefore, I am unable to determine as a matter of law whether the use by Ward County of a portion of the Great Seal is permissible. Instead, as custodian of the Great Seal, the Secretary of State's determination must control rather than the Attorney General's legal decision.

I am sorry I cannot be of further help to you in this matter.

Sincerely,

Nicholas J. Spaeth

vkk

cc: Jim Kusler