

## **N.D.A.G. Letter to Vosper (Dec. 2, 1985)**

December 2, 1985

Honorable F. Kent Vosper  
State Senate  
District 11  
P. O. Box G  
Neche, ND 58265

Dear Senator Vosper:

Thank you for your letter of November 4, 1985, concerning the liability of directors of the county fair association. I assume your reference to county fair association is a reference to those fair associations organized pursuant to N.D.C.C. § 4-02-26. With this assumption in mind, county fair associations are considered governmental agencies. Hadler v. Northwest Agriculture Livestock and Fair Assn., 239 N.W. 736 (N.D. 1931).

Prior to 1974, the rule of law in North Dakota was that governmental agencies were not subject to lawsuits for damages by individuals injured by the negligence or wrongful acts or omissions of the agents and employees of such agencies. This rule was abolished by the North Dakota Supreme Court in Kitto v. Minot Park District, 224 N.W.2d 795 (N.D. 1974).

In response to the Kitto decision, the North Dakota legislature enacted laws dealing with the liability of political subdivisions. N.D.C.C. Ch. 32-12.1. In these various statutes, the legislature set forth the procedure and limitations upon losses brought against political subdivisions as well as insurance funds which may be used to cover such risks.

Generally speaking, political subdivisions are statutorily liable for money damages for injuries when the injuries were proximately caused by the negligence or wrongful act or omission of any employee acting within the scope of the employee's employment. N.D.C.C. § 32-12.1-03. The term "political subdivision" was defined to include units of local government which are created either by statute or by the constitution for public purposes. N.D.C.C. § 32-12.1-02. Clearly, a county fair association created pursuant to N.D.C.C. § 4-02-26 would satisfy the definition of a political subdivision for purposes of governmental liability.

No specific grant of immunity is provided to a county fair association with respect to liability. Thus, the provisions of N.D.C.C. Ch. 32-12.1 would apply resulting in potential liability to the county fair association for negligence or wrongful acts or omissions of its employees.

Your question makes specific mention of directors of the county fair association. The previous discussion assumes an action brought against the directors in their official

capacities (i.e., an action against the association). It is also true that directors of the association may be held liable in their personal capacity as opposed to their official capacity. This would cover the situation where a plaintiff is able to show that the individuals acted outside of the scope of their employment (and, thus, acted in an individual capacity) and caused injury or harm to someone else.

Finally, liability may also exist under federal law. The most common federal statute providing liability to state officials and agencies is 42 U.S.C. § 1983. Section 1983 liability attaches where a person deprives another of constitutional rights, privileges, or immunities under color of state law. A county fair association could possibly be subject to federal liability under this statute.

I hope this answers at least some of your questions. Terry Adkins of this office would be happy to provide any other details or information you need.

Sincerely,

Nicholas J. Spaeth

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