

**LETTER OPINION
93-L-182**

June 8, 1993

Honorable Bryce Streibel
State Senator
District 14
226 2nd Street N
Fessenden, ND 58438

Dear Senator Streibel:

Thank you for your letter inquiring about a potentially corrupt campaign practice. You enclose with your letter a copy of a letter from an incumbent state senator, addressed to his constituents asking for the constituents' support for reelection to the State Senate. This enclosed letter had on it the letterhead of the North Dakota Senate, including a depiction of the Great Seal of North Dakota. You indicate that this mailing was widespread throughout the counties of Kidder, Sheridan, Wells, and parts of Burleigh.

You ask whether use of stationery, which is paid for by the state of North Dakota and carries the Great Seal of North Dakota, constitutes a corrupt campaign practice. Your question presents two issues. The first pertains to use of stationery provided to legislators by the state in a campaign for State Senate regardless of the presence of the Great Seal. The second pertains to use of the Great Seal in a campaign for State Senate.

"A person is guilty of [a] corrupt practice . . . if he willfully . . . [i]s guilty of the use of state . . . property for political purposes." N.D.C.C. ? 16.1-10-01. In this context "state property" and "political purposes" are defined by N.D.C.C. ? 16.1-10-02 which provides:

**16.1-10-02. Use of state services or
property for political purposes.**

Honorable Bryce Streibel
June 8, 1993
Page 2

1. No person may use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or any agency, department, bureau, board, or commission thereof, for any political purpose.

2. The following definitions must be used for the purposes of this section:

a. "Political purpose" means any activity directly undertaken by a candidate for any office in support of his own election to such office; or aid and assistance to any candidate, political party, political committee, or organization, but does not include activities undertaken in the performance of a duty of state office.

b. "Property" includes, but is not limited to, motor vehicles, telephones, typewriters, adding machines, postage or postage meters, funds of money, and buildings. However, nothing in this section may be construed to prohibit any candidate, political party, committee, or organization from using any public building for such political meetings as may be required by law, or to prohibit such candidate, party, committee, or organization from hiring the use of any public building for any political purpose if such lease or hiring is otherwise permitted by law.

c. "Services" includes, but is not limited to, the use of employees during regular working hours for which such employees have not taken annual or sick leave or other compensatory leave.

A person violating this section is guilty of a corrupt practice. The Legislature's primary intent in prohibiting the use of state property for political purposes is to prevent "a misuse of public funds or a financial misuse of public property for political purposes." Safke v. Vande Walle, 279 N.W.2d 415, 417 (N.D. 1979). Applying this standard, the court in Safke held that N.D.C.C. ? 16.1-10-02 was not to be so broadly construed as to prohibit "trivial" uses of state property. Id. What constitutes a "trivial" use of state property will depend upon the facts in each particular case.

Honorable Bryce Streibel
June 8, 1993
Page 3

Resolution of the first issue concerning the factual situation you present turns upon three subissues: first, whether using the stationery in an election for State Senate is a "political purpose" as defined in N.D.C.C. ? 16.1-10-02; second, whether the official stationery received by legislators constitutes "property" within the meaning of N.D.C.C. ? 16.1-10-02; and third, assuming the stationery is "property" under N.D.C.C. ? 16.1-10-02, whether it is state property.

An election for State Senate involves a political campaign, and activities conducted in furtherance of that campaign are within the meaning of the definition of "political purpose" in N.D.C.C. ? 16.1-10-02(2)(a). In that regard, it is my opinion that activities conducted by a candidate to obtain election to State Senate are conducted for "political purposes".

Property, as that term is used in N.D.C.C. ? 16.1-10-02, "includes, but is not limited to, motor vehicles, telephones, typewriters, adding machines, postage or postage meters, funds of money, and buildings." N.D.C.C. ? 16.1-10-02(2)(b). This definition is not exhaustive, but lists only some of the items that are considered property. Words in statutes are to be given their commonly understood meaning. N.D.C.C. ? 1-02-02. The word "property" is something which can be possessed or owned. The American Heritage Dictionary, (2nd College Ed.) 993 (1991). It is my opinion stationery provided to legislators by the State is property under the definition provided in N.D.C.C. ? 16.1-10-02(2)(b).

Whether the stationery is state property at the point it is used by a legislator is another question. Prior to delivery to the legislators the stationery is in the hands of the State, and is state property. However, at some point the stationery loses its character as state property. Assume upon receipt of the stationery, a legislator writes a constituent to convey information about pending legislation. No one would argue that once the letter is received by the constituent, the letter, including the stationery belongs to the constituent and not the state. This is because we recognize that the State has lost its control over the property and the attributes of

Honorable Bryce Streibel
June 8, 1993
Page 4

ownership have passed to the constituent.

You do not provide specific information in your letter upon which I can rely to determine whether legislators are informed of any restrictions which are placed upon the use of the stationery or if the State loses its control over the stationery when it passes to individual legislators. Certainly, the State would have little use for stationery which contains the name and address of a particular legislator. Thus it is arguable that the stationery becomes the property of the legislators who may do with it as they may.

Whether the stationery loses its character as state property at the point it is delivered to the legislators for their use, when the individual legislator utilizes the stationery for a proper purpose, or at the point the stationery is mailed does not need to be determined in this opinion, because the answer to the second issue is determinative of your question.

The second issue raised by your question concerns the limitations on the use of the North Dakota Great Seal. The Great Seal is the property of the State of North Dakota. It is provided for in the state constitution and its use is restricted by statute. N.D. Const. art. XI, § 2; N.D.C.C. § 54-02-01. By prohibiting the use of the Great Seal for commercial or advertising purposes the Legislature has limited the use of the Great Seal to the official business of the State. N.D.C.C. § 54-02-01; See, Letter from Deputy Attorney General Cal Rolfson to Sharon Dahl, (Aug. 18, 1978)(Determining the use of the Great Seal on material urging election of an individual to county sheriff determined the use was not permitted and stating "this office has issued a number of opinions indicating that use of the Great Seal was meant only for official state purposes, and none other.") It is my opinion that use of the Great Seal as a part of a letterhead or otherwise in a campaign for State Senate constitutes a corrupt practice under N.D.C.C. § 16.1-10-01.

Sincerely,

Honorable Bryce Streibel
June 8, 1993
Page 5

Heidi Heitkamp
ATTORNEY GENERAL

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Honorable Bryce Streibel
State Senator
District 14

226 2nd Street N
Fessenden, ND 58438