

N.D.A.G. Letter to Hagerty (Feb. 27, 1985)

February 27, 1985

Ms. Gail Hagerty
Burleigh County State's Attorney
Burleigh County Courthouse
514 East Thayer Avenue
Bismarck, North Dakota 58501

Dear Ms. Hagerty:

Thank you for your letter of February 12, 1985, concerning the application of N.D.C.C. 25-13-02.

That section states as follows:

25-13-02. BLIND OR PHYSICALLY HANDICAPPED PERSON ACCOMPANIED BY GUIDE OR SERVICE DOG TO BE ADMITTED TO PUBLIC PLACES. Every totally or partially blind person shall have the right to be accompanied by a guide dog and every physically handicapped person shall have the right to be accompanied by a service dog, especially trained for those purposes, in places of public accommodations, common carriers, and all places in which the public is generally invited, without being required to pay an extra charge for the guide or service dog; provided, that such persons shall be liable for any damage done to the premises or facilities by the dogs.

N.D.C.C. 25-13-04, states as follows:

25-13-04. PENALTY FOR INTERFERING OR DENYING USE OF FACILITIES. Any person or the agent of any person who denies or interferes with admittance to or enjoyment of the public facilities enumerated in section 25-13-02 or otherwise interferes with the rights of a totally or partially blind person shall be guilty of a class A misdemeanor.

Although "public accommodation" is not defined in N.D.C.C. Title 25, it is defined in N.D.C.C. 14-02.4-02(10). That section states as follows:

14-02.4-02. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

10. "Public accommodation" means every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a

fee, charge, or gratuity. "Public accommodation" does not include a bona fide private club or other place, establishment, or facility which is by its nature distinctly private; provided, however, the distinctly private place, establishment, or facility is a "public accommodation" during the period it caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity.

Further, a "restaurant" is defined in N.D.C.C. 23-09-01(2), as "every building or other structure, or any part thereof, and all buildings in connection therewith, kept, used, maintained, advertised, or held out to the public as a place where meals or lunches are served, but where sleeping accommodations are not furnished." (Emphasis supplied).

Places such as bowling alleys, swimming pools, golf courses, ice cream parlors, and restaurants have commonly been held to be "public accommodations" within the meaning of civil rights statutes. See Words and Phrases, "Public Accommodation" (1963).

Unquestionably, a restaurant is a public accommodation within the meaning of N.D.C.C. 25-13-02. Failure to admit a blind or physically handicapped person accompanied by a guide or service dog to a restaurant is a violation of N.D.C.C. 25-13-02, subjecting the person or the agent of any person failing to admit such blind or physically handicapped person to the penalty for interfering or denying use of facilities found in N.D.C.C. § 25-13-04.

Sincerely,

Nicholas J. Spaeth

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