

N.D.A.G. Letter to Sperry (March 14, 1985)

March 14, 1985

Mr. James E. Sperry
Superintendent
State Historical Society of
North Dakota
North Dakota Heritage Center
Bismarck, ND 58505

Dear Mr. Sperry:

Thank you for your letter of March 6, 1985 concerning the National Historical Preservation Act and your efforts to carry out this act within the State of North Dakota.

I have reviewed the letter from Assistant Attorney General Terry L. Adkins dated July 13, 1984. I am in agreement with the discussion contained in that letter as to the ability of counties, cities, and home rule cities to establish a Historic Preservation Review Commission. As noted in that letter, cities do not have such authority by existing statutes. However, home rule cities do have the necessary authority, as found in N.D.C.C. §40-05.1-06(4), to provide for such commissions. However, this authority must be included within the home rule city charter and implemented through ordinances.

Your restatement of this letter, however, is not altogether complete with respect to counties. As noted in the July 13, 1984 letter, N.D.C.C. §11-11-53 authorizes the Board of County Commissioners of any county to appropriate an amount out of the general fund of the county not to exceed \$5,000.00 annually. This amount is to be paid to the historical society of that county. This money is to be used for the promotion of historical work within the boundaries of the county including the collection, Preservation, and publication of historical material and the dissemination of historical information of the county. The question of whether such a county historical society will satisfy the federal definition of a Historic Preservation Review Commission is not a matter we may pass upon. Instead, this is a matter to be considered under federal law and must be further considered by the appropriate federal officials.

In addition, your letter makes mention of proposed required provisions for a local preservation ordinance as adopted by a home rule city. I assume these provisions would be necessary in order for that home rule city to participate in the federal act. In this regard, such provisions of your agency would be highly recommended for participation in the federal program. However, you should understand and the point should be made quite clear that the state has no authority to require the inclusion of specific provisions within a home rule city ordinance other than that authority required under N.D.C.C. Ch. 40-05.1. I would suggest that your information make it quite clear that the ordinance provisions are

recommended for federal program participation and are not requirements of the State of North Dakota.

Sincerely,

Nicholas J. Spaeth

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