

N.D.A.G. Letter to Wild (May 21, 1985)

May 21, 1985

Mr. Steven J. Wild
Bowman County State's Attorney
P.O. Box 177
Bowman, North Dakota 58623

Dear Mr. Wild:

Thank you for your letter of May 9, 1985, requesting a reconciliation of three statutes concerning interested members of a city governing body bidding on city contracts.

First of all, it should be mentioned that the letter of this office dated April 11, 1985, was an informal response to the Bowman City auditor concerning this subject in general and was not a formal legal opinion on contracts involving particular items. The information supplied to us by the Bowman City auditor concerned bidding on office furniture and equipment and did not involve the bidding upon the construction of a public building. This fact is important when attempting to reconcile these statutes.

Enclosed you will find a copy of a letter sent to the Ellendale City attorney on April 13, 1983. By this letter, N.D.C.C. §§ 48-02-12, 40-13-05, and 12.1-13-03 are discussed and reconciled. As you will note from the copy of this letter, N.D.C.C. §48-02-12 applies only to public contracts involving the alteration, repair, or construction of a building. Furthermore, N.D.C.C. §40-13-05 applies to municipalities having a population of 10,000 or more regardless of the subject matter of the contract in question. Finally, N.D.C.C. §12.1-13-03 applies to contracts in general, but does provide for unanimous approval by the other members of the governing body involved as to the contracts of purchase or employment between the political subdivision and an interested officer of that subdivision. Also, N.D.C.C. §40-13-05.1 provides for disclosure of interest by municipal officers as to particular contracts.

In summary, assuming that the building contract in question in your letter is for the construction of a public building and further assuming that Bowman has a population under 10,000, N.D.C.C. 48-02-12 would apply thus prohibiting a member of the city governing body from entering into such a contract. The existence of the other statutes would not affect this conclusion.

Enclosed is a copy of a letter sent to the Mayville City attorney earlier this year on a similar factual situation as that described in your letter. The conclusion in this letter applies equally to the factual situation described in your letter.

Sincerely,

Nicholas J. Spaeth

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Enclosures