

N.D.A.G. Letter to Solberg (Dec. 2, 1985)

December 2, 1985

Mr. Wayne O. Solberg
Fargo City Attorney
P.O. Box 1897
Fargo, ND 58107-1897

Dear Mr. Solberg:

Thank you for your letter of November 13, 1985, as to whether Martin Luther King Day is a state holiday pursuant to N.D.C.C. 1-03-01(11).

N.D.C.C. 1-03-01(11) provides as follows:

1-03-01. HOLIDAYS. Holidays are as follows:

* * *

Every day appointed by the President of the United States or by the governor of this state for a public holiday.

The President of the United States does have the authority to declare a public holiday. 5 U.S.C. § 6103; Exec. Order No. 11582, 36 Fed. Reg. 2957 (1971). Pursuant to N.D.C.C. § 1-03-01(11), those days declared to be public holidays by the President are considered as state holidays.

Martin Luther King Day, however, was not declared to be a public holiday by a presidential executive order. Instead, this holiday was declared by an act of Congress. Pub. L. 98-144, 97 Stat. 917 (1983). Furthermore, I am unaware of any action taken by the Governor of North Dakota to declare Martin Luther King Day as a public holiday.

Because Martin Luther King Day has been declared to be a federal holiday by congressional legislation (as opposed to presidential executive order) and because the Governor of this state has not appointed Martin Luther King Day as a public holiday, Martin Luther King Day is not a state holiday within North Dakota pursuant to this statute.

I acknowledge an argument that can be made that Martin Luther King Day should be recognized as a state holiday because the congressional legislation in question was signed into law by the President. This argument rests on the premise that the act of signing the legislation into law by the President complies with N.D.C.C. § 1-03-01(11). However, there is a great difference between the act of signing legislation into law (which is not required in order for a law to become effective) and the taking of executive initiative in declaring a day as a holiday by the President. Had the legislature desired to designate

those days as holidays as declared by the Congress of the United States, it would have so stated. Accordingly, Martin Luther King Day is not at present a valid state holiday.

Sincerely,

Nicholas J. Spaeth

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cc: Honorable George A. Sinner
Central Personnel
North Dakota Public Employees Association