

## **N.D.A.G. Letter to Redlin (March 30, 1987)**

March 30, 1987

Honorable Rolland W. Redlin  
State Senator  
Senate Chambers  
State Capitol  
Bismarck, North Dakota 58505

Dear Senator Redlin:

Thank you for your letter of March 4, 1987, referring to my attention remarks made by Senator Dotzenrod and an inquiry from Senator Streibel concerning those remarks. The inquiry relates to whether Senator Dotzenrod's remarks were impermissible under N.D. Const. Art. IV, §9.

N.D. Const. Art. IV, §9, basically provides that a legislator may not offer or promise to give his or her vote or influence in favor of or against any measure or proposition pending or proposed to be introduced into the Legislative Assembly, in return for a promise or agreement by another legislator to give his or her vote or influence in favor of or against a pending or proposed measure or proposition. Any person who violates N.D. Const. Art. IV, §9, is guilty of a class C felony. N.D.C.C. §12.1-12-02. In addition, any member of the Legislature convicted of this offense shall be expelled from the Legislative Assembly. N.D. Const. Art. IV, §9.

First, as you suggested in your letter, it is inappropriate for this office to issue an opinion as to whether any particular person's actions violated the constitutional provision. That is a question of fact and not a question of law upon which the Attorney General may issue an opinion.

As a general observation, however, I would point out that Senator Dotzenrod's remarks do not seem to fall within the prohibition of N.D. Const. Art. IV, §9. The constitution prohibits the agreement of two or more legislators to exchange their votes in favor of or in opposition to particular measures pending before or proposed to be introduced to the Legislative Assembly. It appears that Senator Dotzenrod only stated his intention to vote in a particular way on certain measures and explained the reasons behind his actions. His remarks contain no promise or offer to vote in favor of or against any particular measure in exchange for a specified action by another legislator on that measure or another measure.

Further, even if N.D. Const. Art. IV, §9, on its face, were read to prohibit Senator Dotzenrod's remarks, those remarks would very probably be protected by the First Amendment of the United States Constitution. As the United States Supreme Court stated in New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964), the First Amendment

represents "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." Generally, speech which seeks to bring about political, social, or economic change is protected by the First Amendment, despite any state laws to the contrary. See NAACP v. Clairborne Hardware Co., 458 U.S. 886, 911 (1982). Senator Dotzenrod's comments were made on the floor of the North Dakota Senate, a governmental body established to debate and decide public issues. Also, the remarks in question directly concerned public and political issues. Therefore, it is very likely that a court would find that the senator's statements are protected by the First Amendment and may not be the basis for any criminal proceeding.

If you disagree with this analysis, and believe that N.D. Const. Art. IV, §9, has been violated and that the speech in question is not protected by the First Amendment, you are free to present the facts to the appropriate state's attorney for his or her review. That state's attorney may then decide whether to issue a criminal complaint and proceed in a criminal action. I would be happy to discuss this with you further at your convenience.

Sincerely,

Nicholas J. Spaeth