

N.D.A.G. Letter to Seaworth (April 7, 1987)

April 7, 1987

Mr. Hugh P. Seaworth
Bismarck City Attorney
221 North Fifth Street
P.O. Box 5503
Bismarck, ND 58502

Dear Mr. Seaworth:

Thank you for your letter of March 25, 1987, regarding N.D.C.C. §§ 48-02-12 and 40-13-05. Your first question concerns N.D.C.C. § 48-02-12 which makes it unlawful for any member, employee, or appointee of a governing body to be personally interested in public contracts. Your inquiry is whether this prohibition applies to public contracts or only those contracts subject to N.D.C.C. Ch. 48-02.

This question has occurred several times in the past. I have included copies of letters that this office has written in response to such questions. As you will note, these letters have concluded the prohibition contained within N.D.C.C. § 48-02-12 applies only to public contracts for the alteration, repair, or construction of any building. Thus, the prohibition contained within the statute does not apply to all public contracts in general.

Your second question concerns the prohibition found within N.D.C.C. § 40-13-05 as to municipal officers being directly or indirectly interested in municipal contracts, works, or businesses. I agree with you that the term "municipal officer" is not defined. However, municipal officers for council and commission cities are listed at N.D.C.C. §§ 40-14-01, 40-14-04, 40-15-01, and 40-15-05. In light of the lack of a definition of the term "municipal officer," it is my opinion that we must use these statutes in determining who are municipal officers for the respective cities involved. Any municipal officer or employee who has not been elected, pursuant to N.D.C.C. § 40-14-01 or 40-15-01, and who is not an appointed officer, pursuant to N.D.C.C. §§ 40-14-04 and 40-15-05, would not be covered by the prohibition contained within N.D.C.C. § 40-13-05.

Finally, you make mention of N.D.C.C. § 11-09-47 prohibiting an interest in county contracts by county officials and all county officers and employees. It is true this section does specifically mention an employee of the county in terms of prohibiting personal interest in public contracts of the county. That same language is not used in the statutes dealing with personal interests in contracts of a city. Furthermore, N.D.C.C. § 11-09-47 applies only to county managership forms of government none of which are currently in existence in North Dakota to the best of our knowledge.

Sincerely,

Nicholas J. Spaeth

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Enclosures