

N.D.A.G. Letter to Schulz (May 4, 1987)

May 4, 1987

Ms. Wendy P. Schulz
Stutsman County State's Attorney
Stutsman County Courthouse
511 Second Avenue S.E.
Jamestown, ND 58401

Dear Ms. Schulz:

Thank you for your letter dated April 2, 1987, in which you requested an Attorney General's opinion regarding the admission of guide dogs and service dogs to places of public accommodation.

The first question is whether N.D.C.C. § 25-13-02 creates an exception to the prohibition contained in N.D.C.C. § 19-02-24 and allows guide dogs and service dogs to be admitted to grocery stores, restaurants, convenience stores and other business establishments generally open to the public in which food is displayed, prepared, used, or sold.

N.D.C.C. § 25-13-02 provides as follows:

25-13-02. BLIND OR HANDICAPPED PERSON ACCOMPANIED BY GUIDE OR SERVICE DOG TO BE ADMITTED TO PUBLIC PLACES. Every totally or partially blind person has the right to be accompanied by a guide dog and every handicapped person has the right to be accompanied by a service dog, especially trained for those purposes, in places of public accommodations, common carriers, and all places in which the public is generally invited, without being required to pay an extra charge for the guide or service dog; provided, that such persons are liable for any damage done to the premises or facilities by the dogs.

N.D.C.C. § 19-02-24 provides as follows:

19-02-24. ROOMS IN WHICH FOOD STORED, PREPARED, OR SOLD NOT TO BE USED FOR LIVING QUARTERS. No room or rooms used for the storage, display, preparation, use, or sale of food shall be used as a sleeping, dressing, or living room, nor shall any sleeping, dressing, or living room be adjacent to, nor shall it open into, any such place, nor shall dogs, cats, or other domestic animals be permitted to occupy such rooms. This section does not apply to bed and breakfast facilities for which rules have been adopted under chapter 23-09.¹

N.D.C.C. § 1-02-01 provides guidance by which the North Dakota Century Code is to be construed. This section states that the rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the North Dakota Century Code. Furthermore, provisions and proceedings of North Dakota law are to be construed liberally in the interest of effecting its objectives and promoting justice.

In addition, N.D.C.C. § 1-02-07 states that a specific statutory provision controls a general statutory provision. That statute provides as follows:

1-02-07. PARTICULAR CONTROLS GENERAL. Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest legislative intent that such general provision shall prevail.

Through the application of N.D.C.C. §§ 1-02-01 and 1-02-07, it would appear that N.D.C.C. § 25-13-02 provides for an exception to N.D.C.C. § 19-02-24, and allows guide dogs and service dogs to be admitted to places of public accommodation and to those areas to which the public is generally invited, even though food may be displayed, prepared, used, or sold on the premises.

Further support for this conclusion can be found in the statement of legislative policy contained in N.D.C.C. § 25-13-01, which provides as follows:

25-13-01. LEGISLATIVE POLICY. It is the policy of this state to encourage and enable the blind, the visually handicapped, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment.

The question of whether or not a guide dog or service dog is permitted to accompany a totally or partially blind person or a physically handicapped person into those areas within a facility to which the public is not generally invited (areas restricted to employees only) is not addressed by these statutes.

The second question is whether the denial or interference with the admission of a totally or partially blind person accompanied by a guide dog or a handicapped person accompanied by a service dog to grocery stores, convenience stores, restaurants, or other business establishments to which the public is generally invited in which food is displayed, prepared, used or sold, is a violation of N.D.C.C. § 25-13-04. This section Provides as follows:

25-13-04. PENALTY FOR INTERFERING OR DENYING USE OF FACILITIES. Any person or the agent of any person who denies or

interferes with admittance to or enjoyment of the public facilities enumerated in 25-13-02 or otherwise interferes with the rights of a totally or partially blind person shall be guilty of a class A misdemeanor.

In a letter response by this office to Gail Hagerty, Burleigh County State's Attorney, dated February 27, 1985, the question of the admission of guide dogs and service dogs to places of public accommodation was discussed. It states that, unquestionably, a restaurant is a public accommodation within the meaning of N.D.C.C. § 25-13-02. The letter concluded that the failure to admit a blind or physically handicapped person accompanied by a guide or service dog to a restaurant is a violation of N.D.C.C. § 25-13-02, subjecting the person or agent of any person failing to admit such blind or physically handicapped person to the penalty for interfering, or denying use of facilities found in N.D.C.C. § 25-13-04.

Sincerely,

Nicholas J. Spaeth

dfm