

N.D.A.G. Letter to Farland (July 14, 1987)

July 14, 1987

Mr. Darrell Farland
Executive Director
Governor's Council on Human Resources
3rd Floor State Capitol Annex
Bismarck, ND 58505

Dear Mr. Farland:

Thank you for your letter of June 30, 1987, inquiring as to the statutory requirements for ramped curbing for wheelchairs by cities when curbing projects are undertaken

The relevant statute appears to be N.D.C.C. § 40-31-01.1. The first sentence of this statute states that each city shall hereafter (following the enactment of this statute on July 1, 1977) in intersection curb and gutter repair or installation projects, provide ramped curbing at each intersection crosswalk for the convenience of persons confined to wheelchairs. The second sentence of the statute requires compliance with this statute whenever a city is undertaking extensive intersection curb and gutter repair or installation.

The rule of statutory interpretation is that the entire statute is intended to be effective and must be interpreted as a whole as opposed to its individual portions. N.D.C.C. § 1-02-38. Thus, the last sentence of N.D.C.C. § 40-31-01.1 must be interpreted to apply to the first sentence. In other words, the requirements for ramped curbing for wheelchairs at intersection curb and gutter repair or installation projects exists only where such repair or installation projects are considered "extensive."

In your letter, you contend that any repair to curbs or sidewalks requires a city to repair the old curb with ramped curbing for wheelchairs pursuant to North Dakota law. However, the specific words of N.D.C.C. § 40-31-01.1 do not support this interpretation. This statute requires ramped curbing only for intersection curb and gutter repair or installation projects which can be considered "extensive."

The reference to N.D.C.C. § 48-02-19 does not change this conclusion. This latter statute requires city curbs and crosswalks at principal intersections "in the vicinity of public buildings" shall be made usable to persons in wheelchairs. This requirement exists with respect to public buildings and facilities constructed in whole or in part from funds of the state or its political subdivisions. This section does not apply to city curbs and crosswalks which are not in the vicinity of public buildings.

You indicate that the city of Bismarck is presently undertaking extensive curb replacement. The question of whether this curb work is "extensive" is a question of fact, not of law. The facts and circumstances of each project must be considered in

determining whether it can be labeled as extensive. As it is not a question of law, it is not an appropriate subject for an Attorney General's opinion and, thus, I am unable to respond to that issue.

However, where such projects can be considered as extensive, ramped curbing is required by North Dakota law and may not be ignored on the basis of additional expense to taxpayers in the affected areas.

Sincerely,

Nicholas J. Spaeth

cv

cc: Marie Brown