

N.D.A.G. Letter to Meier (Aug. 11, 1987)

August 11, 1987

Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, ND 58505

Re: Central Dakota Diesel and Supply, Inc.

Dear Mr. Meier:

Thank you for your letter of July 21, 1987, regarding whether or not a corporation may file a voluntary dissolution pursuant to N.D.C.C. § 10-19.1-107 through 113 when it is unable to satisfy all of its obligations and liabilities. It is my understanding that the question was brought to your attention by attorney Charles Whitman in connection with the proposed voluntary dissolution of Central Dakota Diesel and Supply, Inc.

According to Mr. Whitman's letter dated July 14, 1987, Central Dakota filed a Notice of Intent Dissolve with your office on March 30, 1987, and notice was then sent to its creditors. The corporation has since liquidated to the extent possible and has no assets remaining. However, there are remaining creditors who have not been paid.

Central Dakota wants to complete its voluntary dissolution by filing an article of dissolution pursuant to N.D.C.C. § 10-19.1-113. Central Dakota cannot, however, meet the requirement of the fourth paragraph of the Articles of Dissolution which states, "all debts, obligations, and liabilities of the corporation have been paid and discharged, or adequate provisions have been made therefore." The question, therefore, is whether or not it is proper for Dakota Diesel to voluntarily dissolve itself through the filing of articles of dissolution with the Secretary of State.

N.D.C.C. § 10-19.1-113(1)(a) specifically requires that the articles of dissolution must be filed after "[t]he payment of claims of all known creditors and claimants has been made or provided for." N.D.C.C. § 10-19.1-113(2)(b) specifically provides that the articles of dissolution must state "[t]hat all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provisions have been made therefore."

Because the voluntary dissolution procedure set forth in N.D.C.C. § 10-19.1-107 through 113 specifically requires that all corporate debts have been paid and discharged or otherwise provided for, it appears that such voluntary dissolution would not be available to Central Dakota under the facts as set forth in Mr. Whitman's letter. Under the circumstances, however, the corporation may be able to proceed with court supervised voluntary dissolution pursuant to N.D.C.C. § 10-19.1-114.

I hope that this information will be useful to you.

Sincerely,

Nicholas J. Spaeth

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