

N.D.A.G. Letter to Diemert (Aug. 17, 1987)

August 17, 1987

Mr. Daniel G. Diemert
Diemert Law Office
59 First Avenue South
P.O. Box 39
Ellendale, ND 58436-0039

Dear Mr. Diemert:

Thank you for your letter of August 11, 1987, inquiring as to the ability of a mayor to veto the selection of an alderman to fill a vacancy on the city council.

North Dakota law as found at N.D.C.C. § 40-08-08 states that vacancies occurring in the office of alderman shall be filled either by a special city election or by appointment by the city council. There is no provision for a veto by the mayor or anyone else of any person selected by the city council to fill the vacancy of alderman.

The Legislature has provided the mayor with veto powers. N.D.C.C. § 40-08-24 authorizes the mayor to sign or veto any resolution or ordinance passed by the city council. However, we assume that vacancies in the office of alderman filled pursuant to N.D.C.C. § 40-08-08 do not take the form of an ordinance or resolution. Thus, the veto authority of the mayor found at N.D.C.C. § 40-08-24 is not applicable to an appointment by the city council to fill a vacancy on the city council unless such an appointment occurs by ordinance or resolution.

Sincerely,

Nicholas J. Spaeth

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