

N.D.A.G. Letter to Rayl (Sep. 24, 1987)

September 24, 1987

Mr. Richard L. Rayl
Director of Institutions
State Capitol
Bismarck, ND 58505-0144

Dear Mr. Rayl:

Thank you for your letter dated July 29, 1987, in which you inquire as to whether the North Dakota Board of Pardons can delegate to the Director of Institutions, for the remainder of this biennium, supervision and management of parole officers appointed by the Board pursuant to N.D.C.C. § 12-55-07. I apologize for the delay in responding to you.

N.D. Const. Art. V, § 6, sets forth the basic composition and powers of the North Dakota Board of Pardons. The Board of Pardons is vested with numerous duties, including the supervision and management of persons placed on probation by virtue of a suspended sentence and a deferred imposition of sentence.

In addition to these duties, the Board of Pardons is granted the authority to appoint one or more parole officers to carry out the provisions of N.D.C.C. § 12-55-07 and such other duties as the Board of Pardons or the Parole Board may assign to such parole officers.

It is clear that the North Dakota Legislature has placed the primary responsibility for supervision and management of persons placed on probation with the Board of Pardons. To assist the Board of Pardons, parole officers may be appointed by that Board. These parole officers may receive directions in the performance of their duties by either the Board of Pardons or the State Parole Board.

Parole officers are directly responsible to the Board of Pardons and the Parole Board. The Board of Pardons may not delegate powers and functions possessed by that Board which are discretionary, quasi-judicial in character, or which require the exercise of judgment. The Board of Pardons may not delegate authority to the Director of Institutions to supervise adult probationers, nor may it delegate the authority to appoint or assign duties to the parole officers.

However, I see nothing within the relevant statutory provisions which would prohibit the Board of Pardons from delegating ministerial functions to the Director of Institutions. These functions may include the authorizing of annual or sick leave and general personnel matters other than those which relate to the appointment or termination of an appointment of a parole officer.

I recognize that the Board of Pardons meets only periodically and as a Board, is not available for day-to-day management of the parole officers and their offices throughout the state. I would expect that difficulties have arisen pertaining to daily management decisions such as the authorization of purchase orders, travel, and employee leave programs.

Should a request be made to the Board of Pardons to delegate ministerial duties to the Director of Institutions concerning the supervision of parole officers, I would suggest that adequate guidelines be established to ensure that the primary responsibility of the Board of Pardons to supervise probationers and assign duties to parole officers in furtherance of that responsibility is not abridged.

Sincerely,

Nicholas J. Spaeth

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