

N.D.A.G. Letter to Meier (Oct. 1, 1987)

October 1, 1987

Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Secretary of State Meier:

Thank you for your letter of September 16, 1987, concerning the membership of the Emergency Commission and the ability of other persons to sit in the place of named officials comprising the Emergency Commission.

Your first question is whether the Deputy Secretary of State may take the place of the Secretary of State at meetings of the Emergency Commission. N.D.C.C. § 44-03-01 authorizes the Secretary of State, among other officials, to appoint a deputy for whose acts the principal is responsible. N.D.C.C. § 1-01-11 states that any duty imposed upon a ministerial officer and any act permitted to be done by him, unless otherwise provided, may be performed by his lawful deputy. Although the Secretary of State is a ministerial officer for many of the functions he performs, he would not be acting as a ministerial officer as a member of the Emergency Commission as he is called upon to determine whether proper circumstances exist authorizing the Emergency Commission to transfer money or to take moneys from the state contingency fund in response to an emergency. The discretion and judgment which the Secretary of State would necessarily utilize in performing his duties as a member of the Emergency Commission remove the ministerial label from his office while a member of the Emergency Commission.

Despite that fact, the generally accepted rule is that the deputy is a substitute for the principal empowered to act in the name of and on behalf of the principal in all matters in which the principal may act. With respect to the principal, the deputy is in effect an agent and the acts of the deputy are considered the acts of the principal for which the latter is responsible. The principal is responsible for the acts of the deputy and may remove the deputy at his pleasure. 63A Am. Jur.2d Public Officers and Employees §§ 567, 570 (1984).

Statutes as to the composition of the Emergency Commission do not prohibit the named state officials from appearing by and through their duly appointed deputies. When the Legislature has desired to prohibit deputies or designees from replacing their principals on boards, it has specifically stated so. See, e g., N.D.C.C. § 15-01-01 (Board of University and School Lands). In applying the general rule as to the authority of deputies, it is my opinion that the Deputy Secretary of State may appear at the Emergency Commission and act as the substitute for the Secretary of State.

Your second question concerns the ability of the Lieutenant Governor to act as a member of the Emergency Commission when the Governor is present within the state. N.D. Const. art. V, § 7 allows the Governor to prescribe additional duties to the Lieutenant Governor beyond those provided for within the constitution. In State ex rel. Peterson v. Olson, 307 N.W.2d 528 (N.D. 1981), the North Dakota Supreme Court stated that the only limitation placed upon the Governor in prescribing additional duties to the Lieutenant Governor were those duties expressly reserved to the Governor by the constitution. In reviewing the constitution, we did not locate any mention of any duty placed upon the Governor to act as a member of the Emergency Commission. Indeed, the Emergency Commission itself is a creation of statute as opposed to the constitution.

As the constitution does not provide any duty to the Governor to act as a member of the Emergency Commission, such a statutory responsibility may be assigned to the Lieutenant Governor pursuant to N.D. Const. art. V, § 7 regardless of whether the Governor is present within the state.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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