

N.D.A.G. Letter to Duppler (Feb. 28, 1990)

February 28, 1990

Mr. Alan Duppler
Mercer County State's Attorney
Mercer County Courthouse
Stanton, ND 58571

Dear Mr. Duppler:

Thank you for your February 7, 1990, letter regarding the recording of deeds and the investing of county moneys.

The first issue you raised was whether N.D.C.C. § 11-18-02.2 applies to deeds that were issued and delivered prior to the effective date of the statute, but that are presented for recording after the effective date.

A similar issue was raised in a 1981 opinion issued by this office. See 1981 N.D. Op. Att'y Gen. 131. I am enclosing a copy of that opinion for your review.

The issue raised in the enclosed 1981 Attorney General's opinion was: "Whether Section 11-18-02.2 of the North Dakota Century Code allows a transition period after its effective date during which deeds may be recorded without containing one of the required statements of full consideration." Id. The opinion concluded that "Section 11-18-02.2, N.D.C.C., which was enacted with an emergency clause and which became law at 2:38 p.m. on March 26, 1981, allows no transition period and that all deeds after that time cannot be recorded unless they contain one of the required statements of full consideration." Id.

The opinion observed that N.D.C.C. § 11-18-02.2 is worded "clearly and unambiguously. If the Legislature had intended a transition period for deeds executed on or before the date the Act took effect, it could easily have so provided." Id. (Emphasis supplied.)

Thus, any deed presented for recording after the effective date of N.D.C.C. § 11-18-02.2 must contain one of the required statements of full consideration. This also applies to deeds issued and delivered prior to the effective date of the statute, but presented for recording after the effective date.

The second issue you raised was whether it is permissible for a county to deposit public funds with a financial institution within the state and then allow that institution to invest those funds with institutions outside of the state.

N.D.C.C. § 21-04-05 provides:

21-04-05. Financial institution -- Designation as depository. Any financial institution duly incorporated in this state under and pursuant to the laws governing the incorporation of financial institutions, and any financial institution situated and doing business within this state, and the Bank of North Dakota, may be designated a depository of public funds by the proper board as herein defined. The board may select two or more financial institutions in the same county as depositories, but if more than one financial institution is designated, the board shall deal with the financial institutions selected and designated impartially, both as to the deposit of funds and the withdrawal of funds and the requirements as to bonds. The board shall take into consideration in selecting and designating the depository or depositories, the condition of each financial institution and the capital, surplus, and general credit thereof.

N.D.C.C. § 21-04-05.

N.D.C.C. § 21-04-05 limits the deposit of public funds to those institutions situated and doing business within North Dakota.

Nothing in N.D.C.C. ch. 21-04 prohibits the institution from investing the deposited funds with institutions outside of the state. However, if the county deposits its public funds with an institution other than the Bank of North Dakota, the county must satisfy several additional requirements established in N.D.C.C. ch. 21-04. Those requirements established in N.D.C.C. ch. 21-04 were discussed in detail in a 1978 opinion issued by this office. See 1978 N.D. Op. Att'y Gen. 49. I am enclosing a copy of that opinion for your review.

The opinion interpreted N.D.C.C. §§ 21-04-08, 21-04-09, 21-04-16, and 21-04-17. These sections involve deposits of funds in institutions other than the Bank of North Dakota. They require the political subdivision to require a bond or pledge of assets from the bank if the largest amount that at any time may be made in such depository exceeds the federal insurance even though the amount actually deposited at the time the bank is named an official depository is less than the insurance, and the political subdivision need only require a bond or pledge of assets for the amount the largest deposit may exceed the federal insurance; it need not require a bond or pledge of assets for the amount covered by the federal insurance.

The opinion concluded that a political subdivision was required to obtain "a bond or pledge of assets from the bank" if the amount deposited would possibly exceed the federal insurance. The amount which is to be protected by this mechanism is only the amount which exceeded the federally insured amount.

In conclusion, it is permissible for a county to deposit public funds with a financial institution within the state although that institution may invest those funds with institutions outside of the state. However, if the funds are deposited with financial institutions other than the Bank of North Dakota, the requirements for protection of the uninsured money

must be followed.

Sincerely,

Nicholas J. Spaeth

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Enclosures