

N.D.A.G. Letter to Ficek (Feb. 5, 1991)

February 5, 1991

Mr. Vince H. Ficek
City Attorney
P.O. Box 866
Dickinson, ND 58602-0866

Dear Mr. Ficek:

Thank you for your January 23, 1991, letter concerning the application of the Veterans' Preference Law in promotions.

Your first question is whether N.D.C.C. § 37-19.1-02 applies to the internal departmental promotion process established by the City of Dickinson. District Judge Gordon Hoberg ruled, in January of 1985, that the Veterans' Preference Law did not apply to an internal promotion within the North Dakota State Hospital. Consistent with Judge Hoberg's memorandum opinion, it is my opinion that N.D.C.C. § 37-19.1-02 would not apply to an internal departmental promotion within the parameters of Dickinson's civil service system. For your convenience, I have enclosed a copy of Judge Hoberg's opinion.

Your second question is whether Dickinson City Code sections 25-26(c) and 26-27(b) require the Civil Service Commission to grant a veteran preference in promotions. In your letter you note that section 26-27(b) requires the Civil Service Commission to "follow all other criteria as required of a new employee" applying for the position. This section also provides, "The employee's application, test scores and other documentation, along with a recommendation from the department head, will be submitted to the Civil Service Commission for their review, interview and recommendation." (Emphasis added). Further, this section provides that the applicants will be ranked according to the established rating system. The means by which veterans' preference is achieved under section 26-25(c) is through a five or ten percent increase to the nondisabled or disabled veteran's final grade. Construing the above city code sections in pari materia, I agree with your initial assessment that veterans' preference would be required under Dickinson's civil service system for promotion situations.

I hope that this answers your inquiry.

Sincerely,

Nicholas J. Spaeth

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Enclosure