

N.D.A.G. Letter to Hagen (June 10, 1991)

June 10, 1991

The Honorable Craig Hagen
Commissioner of Labor
State Capitol
600 E Boulevard Avenue
Bismarck, ND 58505

Dear Commissioner Hagen:

Thank you for your May 23, 1991, letter asking my opinion on whether nonpolitical public service announcements made by your office concerning the new minimum wage for North Dakota would violate any statute or rule.

A public service announcement is an announcement made by a non-profit, tax exempt, organization through a media outlet that informs the public of benefits concerning health, security, or matters of economics, where the announcement is made by the media outlet free of charge. It is my understanding that certain media outlets have varying policies as to what type of announcements they will air as public service announcements.

The use of state services or property for political purposes is unlawful. N.D.C.C. § 16.1-10-02(1) provides:

"No person shall use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or any agency, department, bureau, board, or commission thereof, for any political purpose.

"Political purpose" means any activity directly undertaken by a candidate for any office in support of his own election to such office; or aid and assistance to any candidate, political party, political committee, or organization, but shall not include activities undertaken in the performance of a duty of state office."

N.D.C.C. § 16.1-10-02(2)(a).

Other statutes prohibit a public employee from engaging in political activities while on duty and from using any motor vehicle belonging to the state for those purposes. For the purposes of those sections, "political activity" means "any form of campaigning or electioneering." N.D.C.C. §§ 44-08-19, 39-01-03, and 39-01-04.

The duties of the North Dakota Commissioner of Labor are listed in N.D.C.C. § 34-05-01.3. In subsections 1, 2, 3, and 6 of that section, duties are noted as follows:

1. Improve working conditions and living conditions of employees and advance their opportunities for profitable employment.
2. Foster, promote, and develop the welfare of both wage earners and industries in North Dakota.
3. Promote friendly and cooperative relations between employers and employees.
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6. Acquire and disseminate information on the subjects connected with labor, relations between employers and employees, hours of labor, and working conditions.

Under N.D.C.C. ch. 34-06, the Commissioner of Labor is required to investigate and adopt standards for minimum wages, hours of employment and other conditions of labor, including minimum wages for minors. The duties of the Commissioner of Labor under N.D.C.C. ch. 34-06 concerning minimum wages and hours and conditions of labor are directly related to the duties of the Commissioner under N.D.C.C. ch. 34-05 to advance opportunities for profitable employment, promote the welfare of wage earners and industries, promote friendly and cooperative relations between employers and employees, and disseminate information concerning labor and working conditions.

It is my opinion that your production and airing of nonpolitical public service announcements concerning the duties and responsibilities of the Commissioner of Labor with respect to the minimum wage and conditions and hours of labor would not be contrary to law or rule because such announcements relate to the duties of the Commissioner of Labor noted above. Although those announcements are aired free of charge without an expenditure of public funds, any expenditure of employee time for the production of the announcement would be permissible in fulfillment of the duties of the Commissioner of Labor.

Sincerely,

Nicholas J. Spaeth

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