

N.D.A.G. Letter to Kusler (July 25, 1991)

July 25, 1991

Honorable Jim Kusler
Secretary of State
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Secretary of State Kusler:

Thank you for your letter of July 2, 1991, in which you asked whether the amendment to North Dakota Century Code (N.D.C.C.) § 45-11-05 as contained in House Bill 1448 would allow your office to change its inquiry procedures regarding the continuance of a contractor's license held by a fictitious partnership.

House Bill 1448 amended N.D.C.C. § 45-11-05 by providing for the filing of an amended fictitious name certificate with the Secretary of State's Office when there is a change in the general partners of a fictitious partnership. The amendment also provided that the old certificate could not be canceled. Under the old statute, a new certificate was required to be issued when there was a change in the general partners and the certificate was to be canceled.

The relationship between the requirements of N.D.C.C. § 45-11-05 and the continuance of a contractor's license was addressed in a prior letter opinion to your office. In the opinion I stated:

As noted by the North Dakota Supreme Court, "[t]he partnership agreement in any respects is the law of partnership." Liechty v. Liechty, 231 N.W.2d 729, 731 (N.D. 1975). In each case, the partnership agreement will have to be consulted in determining whether dissolution causes a termination of a partnership. Where a termination does occur, it is clear that a new contractor's license will have to be obtained if the successor entity wishes to continue as a contractor. If the partnership agreement provides for the continuation of the partnership upon a dissolution, then the partnership continues and there is no need to obtain an additional contractor's license. Letter from Attorney General Nicholas Spaeth to Deputy Secretary of State Robert R. Schaible (January 14, 1988).

The filing of an amended fictitious name certificate as provided for by House Bill 1448 does not alter my prior opinion on this subject. The amended certificate provides your office with the information needed to determine whether the partnership agreement provides for the continuation of the partnership upon dissolution and hence whether a new contractor's license would be needed by the partnership.

I hope that this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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