

**N.D.A.G. Letter to Carlisle (Oct. 25, 1991)**

October 25, 1991

Honorable Ron Carlisle  
House of Representatives  
District 52  
PO Box 222  
Bismarck, ND 58502

Dear Representative Carlisle:

Thank you for your September 10, 1991, letter seeking clarification of a July 5, 1989, Attorney General's opinion regarding the office of city auditor. Your questions relate specifically to N.D.C.C. §§ 40-16-16 and 40-13-11, relating to city officers. Because your questions relate specifically to my July 5, 1989, opinion to Representative Thompson, I have enclosed a copy of that opinion for informational purposes.

Your first question is whether, considering the legislative intent regarding the passage of N.D.C.C. § 40-16-16, the city auditor's statutory duties may be assigned to someone else. N.D.C.C. § 40-16-16 states:

Delegation of powers and duties. The city council or city commission may delegate any functions and duties of the city auditor to an officer appointed under section 40-14-04 or 40-15-05.

[N.D.C.C. § 40-14-04 relates to the appointment of officers in council cities and N.D.C.C. § 40-15-05 relates to the appointment of officers in commission cities.]

I have received letters from both you and former state Representative Ed Metzger urging me to interpret the language of N.D.C.C. § 40-16-16 as allowing the delegation of only a part of a city auditor's functions and duties. Mr. Metzger indicates that such was his intent when the bill was passed.

I cannot consider the legislative history of N.D.C.C. § 40-16-16 because the language of the statute is clear and unambiguous on its face. "When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." N.D.C.C. § 1-02-05. The North Dakota Supreme Court has stated that "only if a statute is ambiguous are we permitted to explore into the legislative object, the consequences, and the preamble." Hughes v. North Dakota Crime Victims Reparations Bd., 246 N.W.2d 774, 776 (N.D. 1976). "Where constitutional and statutory provisions are clear and unambiguous, it is improper for the courts to attempt to construe the provisions so as to legislate additional requirements or proscriptions which the words of the provisions do not themselves provide." Haggard v. Meier, 368 N.W.2d 539, 541 (N.D. 1985). "It must be presumed the Legislature intended all that it said, and that it said all

that it intended to say. The Legislature must be presumed to have meant what it has plainly expressed. It must be presumed, also, that it made no mistake in expressing its purpose and intent. Where the language of a statute is plain and unambiguous, the 'court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it.'" City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940) (citations omitted).

Based on the language of N.D.C.C. § 1-02-05 and the interpretation of that section by the North Dakota Supreme Court, I must conclude that the clear and unambiguous language of N.D.C.C. § 40-16-16 prevails and a city council or city commission may delegate any functions and duties of the city auditor to a properly appointed officer.

Your second question is whether, when considering the language of N.D.C.C. § 40-13-11 in its proper order, it is permissible to take statutorily mandated duties away from the auditor. N.D.C.C. § 40-13-11 states, in relevant part:

The definition by this title of the duties of municipal officers shall not preclude the governing body from defining by ordinance further and additional duties to be performed by any such officer.

N.D.C.C. § 40-13-11 merely indicates that the governing body of a municipality may assign duties to a particular officer in addition to those which are specifically listed by statute. N.D.C.C. § 40-13-11 does not eliminate the ability of the governing body to delegate the city auditor's functions to another properly appointed officer under N.D.C.C. § 40-16-16.

Furthermore, "[w]henever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision. . ." N.D.C.C. § 1-02-07. N.D.C.C. § 40-13-11 is a general provision governing officers of municipalities. N.D.C.C. § 40-13-11 cannot be read as prohibiting a governing body from delegating the statutorily-assigned duties of a city officer to another city officer under a special statute. N.D.C.C. § 40-15-05, for example, specifically allows a board of city commissioners to dispense with an appointive office and to provide that the duties of that office be performed by other officers, boards, or committees. Similarly, N.D.C.C. § 40-16-16 specifically allows a city council or city commission to delegate any functions and duties of the city auditor to another properly appointed officer. Applying the rule that a special statute prevails over a conflicting general statute if N.D.C.C. §§ 40-16-16 and 40-13-11 were found to be in conflict, the specific provisions of N.D.C.C. § 40-16-16 would still prevail. Thus the functions and duties of the city auditor could be delegated to another properly appointed officer.

I therefore conclude that the reasoning applied and conclusions reached in my July 5, 1989 opinion to Representative Thompson are correct. I hope I have addressed the issues to your satisfaction.

Sincerely,

Nicholas J. Spaeth

vkk  
Enclosure