

N.D.A.G. Letter to Draeb (Nov. 4, 1991)

November 4, 1991

Mr. August C. Draeb
Hebron City Attorney
Hebron, ND 58638

Dear Mr. Draeb:

Thank you for your October 21, 1991, letter regarding filling the position of city auditor. You indicate in your letter that the city of Hebron had an auditor and a deputy auditor. The deputy auditor is currently filling in for the auditor because the auditor resigned. You ask whether the Mayor is required to fill the position of auditor immediately or whether the deputy auditor may serve as auditor until the reorganizational meeting following the municipal election in April, at which time a permanent auditor would be selected.

In cities operating under the city council form of government, the Mayor, with the approval of the city council, appoints the city auditor. N.D.C.C. § 40-14-04. The city auditor, with the consent and approval of the governing body of the city, may appoint a deputy. N.D.C.C. § 40-16-02. If there is a vacancy in the office of the auditor, the deputy must "perform the duties of the auditor." N.D.C.C. § 40-16-02. Because a vacancy has been created by the resignation of the auditor, it is appropriate for the deputy auditor to assume the duties of the auditor through the auditor's unexpired term. See N.D.C.C. § 40-14-05 (terms of appointive officers.)

I trust this responds to your question.

Sincerely,

Nicholas J. Spaeth

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