

N.D.A.G. Letter to Nordsven (March 18, 1992)

March 18, 1992

Ms. Mary E. Nordsven
Belfield City Attorney
Howe, Hardy, Galloway & Maus, PC
PO Box 370
Dickinson, ND 58601

Dear Ms. Nordsven:

Thank you for your February 14, 1992, letter seeking a clarification of N.D.C.C. § 44-08-21 regarding what must be stated in petitions for the recall of elected officials of political subdivisions.

N.D.C.C. § 44-08-21 states:

Recall of elected officials of political subdivisions. An elected official of a political subdivision, except an official subject to recall pursuant to section 10 of article III of the Constitution of North Dakota, is subject to recall for misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, or gross incompetency by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent general election, except in any political subdivision with a population of not more than one hundred, the petition must be signed by at least six electors. .

..

The petition must include the stated reason for the recall and must be filed with the official with whom a petition for nomination to the office in question is filed unless that official is the person subject to recall, in which case the petition must be filed with the secretary of state. The official with whom the petition is filed shall pass on the sufficiency of a petition under this section in the manner required of the secretary of state under section 16.1-01-10. . . .

....

N.D.C.C. § 44-08-21 (emphasis added).

The language underlined in the above quote was added to N.D.C.C. § 44-08-21 by the 1991 Legislature with the passage of House Bill No. 1256. Also included in House Bill No. 1256 was an amendment to N.D.C.C. § 16.1-01-10 regarding the sufficiency of petitions; the following sentence was added:

When the petition is for the recall of an elected official of the political subdivision under section 44-08-21, the petition must be deemed insufficient unless the petition contains a stated reason or reasons for the recall consistent with the reasons provided in section 44-08-21.

N.D.C.C. § 16.1-01-10 (emphasis added). The language in the new sentence added to N.D.C.C. § 16.1-01-10 clearly indicates that the reason which must be stated in the recall petition is one of the six reasons provided or listed in N.D.C.C. § 44-08-21, i.e., misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, or gross incompetency. It is not necessary that the petition indicate a specific instance of conduct by the individual being recalled, but rather, it is sufficient to indicate one of the reasons stated in N.D.C.C. § 44-08-21. The legislative history of the passage of House Bill No. 1256 supports this conclusion.

I trust this responds to your question.

Sincerely,

Nicholas J. Spaeth

jfl