

N.D.A.G. Letter to Berg (March 31, 1992)

March 31, 1992

Honorable Rick Berg
State Representative
112 North University #101
Fargo, ND 58102

Dear Representative Berg:

Thank you for your March 9, 1992, letter in which you ask whether it would be a violation of N.D.C.C. ch. 16.1-10, the Corrupt Practices Act, to use campaign contributions to pay for a dinner to which voters from your district will be invited and at which you and certain candidates for state office will speak.

N.D.C.C. § 16.1-10-01 provides, in part, that a person who willfully engages in a practice prohibited by N.D.C.C. § 12.1-14-03 is guilty of a corrupt practice. N.D.C.C. § 12.1-14-03(2) provides that a person is guilty of a class A misdemeanor if, in connection with any election, the person offers or gives a thing of pecuniary value to another as consideration for the recipient's voting for or against any candidate or issue.

There are two issues to be addressed in responding to your question. The first concerns whether a dinner is a thing of value. This office has previously taken the position that giving a thing of small value is in the nature of advertising and is not prohibited by N.D.C.C. § 12.1-14-03(2). Letter from Attorney General Allen Olson to David Strauss (July 16, 1976). However, whether a dinner, which as you indicate has a value of approximately \$4.75, is a thing of small value is a question of fact. As a matter of policy, this office will not address that question. I am enclosing a copy of my May 19, 1988, letter to the Dunn County State's Attorney in which I discuss the rationale for this policy.

The second issue concerns whether the dinner can be characterized as consideration for the recipient's voting for or against a candidate or issue. As I stated in my May 19, 1988, letter, my review concerning this issue suggests that the intent of N.D.C.C. § 12.1-14-03(2) is to prohibit the passing of an item of value from one person to another where the recipient agrees, upon receipt of the item, to vote or not vote in a particular fashion. Again, the resolution of this issue involves a question of fact which this office will not address.

Although I am unable to issue an opinion on the question you have raised, I hope that this discussion is helpful to you.

Sincerely,

Nicholas J. Spaeth

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