

N.D.A.G. Letter to Rotering (Nov. 17, 1992)

November 17, 1992

Mr. Jeff Rotering
Adams County State's Attorney
PO Box 1379
Hettinger, ND 58639

RE: Hunting Near Occupied Buildings -- N.D.C.C. § 20.1-01-21

Dear Mr. Rotering:

Thank you for your letter of October 5, 1992, regarding North Dakota Century Code section 20.1-01-21 and its effect on hunting near occupied buildings.

N.D.C.C. § 20.1-01-21 states:

20.1-01-21. Hunting near occupied building without permission unlawful. -- No person shall hunt or pursue game upon the premises of another, within four hundred forty yards [402.34 meters] of any occupied building, without consent of the person occupying such building.

The first question referenced in your letter was:

1. May a person hunt or pursue game upon the premises of another within four hundred forty yards of an occupied building if the property upon which he is hunting or pursuing game is not owned or possessed by the occupier of a building?

The answer to your first question is no unless (1) the hunter owns the land on which he is hunting, or (2) has the permission of the person occupying the building. N.D.C.C. § 20.1-01-21 and its legislative history indicate that the person occupying the building need not own the land on which hunting is occurring in order to prevent the hunting activity. The ownership of the land where the hunting is occurring is relevant to the requirement that no person may hunt or pursue game within 440 yards of an occupied building only if the hunter is also the owner of the property on which the hunting is occurring.

The second question referenced in your letter was:

2. Whether the term, "occupied building," requires that the building in question be actually occupied at the time a person is hunting within four hundred forty yards, or occupied generally and not necessarily at the time of hunting or pursuit of game?

N.D.C.C. § 20.1-01-21 and its legislative history does not provide a direct definition of “occupied building” as it is utilized in the section. However, N.D.C.C. § 12.1-22-06(4) defines “occupied structure”:

4. “Occupied structure” means a structure or vehicle:
 - a. Where any person lives or carries on business or other calling; or
 - b. Which is used for overnight accommodation of persons.

Any such structure or vehicle is deemed to be “occupied” regardless of whether a person is actually present.

Any such structure or vehicle is deemed to be “occupied regardless of whether a person is actually present. For the officer out in the field, the question of whether a building is “occupied” is a factual determination involving a practical interpretation of N.D.C.C. §§ 12.1-22-06(4) and 20.1-01-21. In making this determination, the officer should bear in mind the purpose of this law, which is to keep persons and property safe from stray bullets fired by hunters. Consideration of these factors should result in a fair interpretation of “occupied building” for purposes of enforcement of N.D.C.C. § 20.1-01-21.

Sincerely,

Nicholas J. Spaeth