

LETTER OPINION
93-L-163

May 26, 1993

Peter H. Furuseth
Williams County State's Attorney
PO Box 2047
Williston, ND 58802-2047

RE: State's Attorney's Responsibilities Under House
Bill 1238

Dear Mr. Furuseth:

I have had an opportunity to review your May 6, 1993, letter to Deputy Attorney General Jim Vukelic in which you raise questions concerning the responsibility of a state's attorney in the issuance of a disorderly conduct restraining order authorized by section 2 of House Bill No. 1238. You question whether a state's attorney may represent both the state of North Dakota and the party requesting the restraining order, and whether N.D.C.C. ? 11-06-05(5) would be violated if a full-time state's attorney acts as an attorney or counsel for any party, other than the state or county.

Subsection 10 of section 2 of House Bill No. 1238 provides:

Notwithstanding subsection 5 of section 11-16-05, a state's attorney may advise and assist any person in the preparation of documents necessary to secure a restraining order under this section.

Subsection 10 specifically authorizes a state's attorney to "advise and assist any person in the preparation of documents necessary to secure" a disorderly conduct restraining order. Specific reference is made to N.D.C.C. ? 11-06-05(5) in providing an exception to the liability provision and limitation of authority of a full-time state's attorney as outlined in N.D.C.C. ? 11-16-05(5).

Based upon this specific exception authorized by the 1993 Legislative Assembly, a full-time state's

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attorney would not be acting in violation of N.D.C.C.
? 11-16-05(5) by engaging in conduct authorized by
subsection 10 of section 2 of House Bill No. 1238.

I see nothing in House Bill No. 1238 which requires
the state's attorney to represent in any court
proceeding the person who desires to secure a
disorderly conduct restraining order. A state's
attorney is authorized to "advise and assist any
person in the preparation of documents necessary to
secure" the restraining order, but this authorization
does not extend to conduct beyond that specified in
subsection 10 of section 2 of House Bill No. 1238.

You also ask whether a prosecutor's office is required
to notify the person requesting a disorderly conduct
restraining order of any applicable filing fees.
House Bill No. 1238 imposes no such requirement upon a
state's attorney, but I assume that information would
be provided to the person seeking the order as a part
of the general advice and conversations concerning the
procedures for preparation of documents necessary to
secure the restraining order.

I hope that I have adequately responded to your
inquiries.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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