

LETTER OPINION
2006-L-12

March 29, 2006

The Honorable Alvin A. Jaeger
Secretary of State
600 East Boulevard Avenue
Bismarck, ND 58505-0500

The Honorable Tim Mathern
State Senate
429 16th Ave S
Fargo, ND 58103-4329

Dear Secretary of State Jaeger and Senator Mathern:

Thank you for your letter asking whether the prohibition on corporate campaign contributions contained in N.D.C.C. § 16.1-08.1-03.3(1)(c) applies to candidates for city and county elected offices. Based on the following, it is my opinion that the prohibition on corporate campaign contributions contained in N.D.C.C. § 16.1-08.1-03.3(1)(c) applies to contributions to candidates for city and county elected offices.

ANALYSIS

Section 16.1-08.1-03.3(1)(c), N.D.C.C., provides that “[a] corporation, cooperative corporation, limited liability company, or association may not make a direct contribution: c. To aid any candidate for political office or for nomination to political office.”

The term “political office” is not defined in N.D.C.C. ch. 16.1-08.1 nor elsewhere in state law. The chapter does contain a definition of “public office,” which is limited to elected statewide or legislative office. Thus, you question whether the prohibition on direct corporate campaign contributions applies to offices other than elected statewide or legislative offices, such as elected city or county positions.

The provision prohibiting direct corporate campaign contributions was previously contained in N.D.C.C. § 16.1-08-02.¹ This predecessor statute, along with the rest of N.D.C.C. ch. 16.1-08, was repealed in 1995.² The legislative history to the predecessor

¹ See N.D.A.G. Letter to Solberg (Feb. 19, 1991).

² See 1995 N.D. Sess. Laws ch. 207, § 20.

provision contained in former N.D.C.C. § 16.1-08-02 is not helpful in ascertaining the meaning of “political office.”

Since the term “political office” is not defined in the code, the words are to be understood in their ordinary sense.³ The term “political office” is not contained in the current edition of Black’s Law Dictionary, but it does appear in a prior edition:⁴ “[c]ivil offices are usually divided into three classes, -- political, judicial, and ministerial. Political offices are such as are not immediately connected with the administration of justice, or with the execution of the mandates of a superior”⁵

Similarly, the word “political” has been defined as: “[o]f, pertaining to, or dealing with the study, structure, or affairs of government, politics, or the state.”⁶ The term “office,” in this context, means: “[a] position of authority, duty, or trust given to a person, as in a government . . . [a] public position”⁷ These definitions are quite broad and would include any civil office which is not judicial or ministerial, or any public or governmental position of authority or trust. The ordinary dictionary definition of political office would seem to encompass a city or county elected office. Thus, the ban on corporate contributions to a candidate for a political office under N.D.C.C. § 16.1-08.1-03.3(1)(c) would appear to apply to a candidate for a city or county elected position, unless the contribution came from a separate segregated fund, as allowed under N.D.C.C. § 16.1-08.1-03.3(2).

Likewise, some courts and other authorities have given the term “political office” a fairly broad reading and have not restricted campaign contribution bans just to partisan offices.⁸ In New Mexico ex rel. Gonzales v. Manzagol,⁹ the court construed the term to include the elected position of city councilman within a statute prohibiting classified state employees from holding political office. The court noted:

It is apparent to us that the office which Petitioner sought, to which he was elected, and which he now holds, clearly falls within the definition of a “political office.” . . . We cannot agree with Petitioner’s contention that [the statute] was directed solely at . . . organized political party activities. The

³ N.D.C.C. § 1-02-02.

⁴ See Black’s Law Dictionary 1235 (Rev. 4th ed. 1968).

⁵ Id.; New Mexico ex rel. Gonzales v. Manzagol, 531 P.2d 1203, 1204 (N.M. 1975).

⁶ The American Heritage Dictionary 960 (2d coll. ed. 1991).

⁷ Id. at 863.

⁸ Municipal and county elections are non-partisan in this state. See N.D.C.C. §§ 40-21-06 and 16.1-11-08.

⁹ 531 P.2d 1203, 1205 (N.M. 1975).

language of the statute neither compels nor implies this construction of the term "political."¹⁰

C.f. Eugene McQuillin, The Law of Municipal Corporations § 12.02.10 (3d ed. 2001 rev. vol.) (municipal ban on city employees making campaign contributions generally held to be valid "and the fact that the ban applies to nonpartisan municipal elections is not of consequence since the evils sought to be avoided are found in nonpartisan as well as partisan elections"). See also Ohio ex rel. Green v. City of Cleveland,¹¹ ("any election in which the voters are asked to pass judgment on candidates for office or on issues, is political in its purpose and result").

Based on the foregoing, it is my opinion that the prohibition on corporate campaign contributions contained in N.D.C.C. § 16.1-08.1-03.3(1)(c) applies to candidates for elected city and county offices.

Sincerely,

Wayne Stenehjem
Attorney General

jjf/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹²

¹⁰ Id.

¹¹ 33 N.E.2d 35, 38 (Ohio Ct. App. 1940).

¹² See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).