

## **N.D.A.G. Letter to Terry (Jan. 17, 1985)**

January 17, 1985

Mr. Wayne Terry  
Assistant Commandant  
North Dakota Veterans Home  
Lock Box 673  
Lisbon, North Dakota 58054

Dear Mr. Terry:

Thank you for your letter of December 18, 1984, regarding the plans for the North Dakota Veterans Home fair scheduled for the summer of 1985.

The following are the specific questions you asked in your letter and my responses to those questions.

- 1) What kind of liability would we have and would we be covered by any state insurance?

The Veterans Home exposure to liability would not be different than the liability the Veterans Home has now for its actions. The specific factual situations might be somewhat different, but the legal liability principles would be the same.

There is no State insurance which would cover the North Dakota Veterans Home for its planned fair. However, N.D.C.C. 32-12.1-15 provides as follows:

32-12.1-15. STATE AGENCIES AUTHORIZED TO PURCHASE INSURANCE. The state or any state agency, bureau, or department may insure against liabilities provided by this chapter for its own protection and for the protection of any state employee. If a premium savings will result therefrom, the policies of insurance may be taken out for more than one year, but in no event beyond a period of five years.

2. If the state or any state agency, bureau, or department shall purchase insurance pursuant to this section, the purchaser shall waive its immunity to suit only to the types of insurance coverage purchased and only to the extent of the policy limits of the coverage. Provided, the purchaser or its insurance carrier is not liable for claims arising out of the conduct of a ridesharing arrangement, as defined in section 8-02-07.
3. The insurance coverage authorized by this chapter may be in addition to insurance coverage which may be purchased by the state or any state agency, bureau, or department, or a political subdivision, under any other provision of law.

4. The attorney general shall appear and defend all actions and proceedings against any state employee for alleged negligence within the scope of employment in any court in this state or of the United States when the agency, bureau, or department employing the employees has not purchased liability insurance coverage pursuant to law. If both parties to an action are state employees, the attorney general shall determine which state employee the attorney general shall represent, and the other employee may employ counsel to represent the employee. If one of the adverse parties is a state agency, bureau, or department, the attorney general shall appear and defend the agency, bureau, or department in the manner otherwise provided by law.

As can be seen from this section of law, the Veterans Home can purchase insurance which is a waiver of the State's immunity to suit only to the types of insurance coverage purchased and only to the extent of the policy limits of the coverage. The Veterans Home could purchase an insurance policy on its own from an insurance carrier to provide for general liability insurance for the fair itself in accordance with N.D.C.C. 32-12.1-15. I would advise the Veterans Home that it do so.

- 2) If we charged small fees for booths, etc. could they be considered donations for the benefit of the residents and used for that purpose?

While there is no problem with charging small fees for booths, a problem results in what can be done with the donations if the donations are given directly to the Veterans Home. If the donations are in fact given directly to the Veterans Home in the form of cash donations, the monies received must be deposited directly into the general fund and not retained for use by the Veterans Home. This is required by Section 12, Article 10 of the North Dakota Constitution which provides:

Section 12.

1. All public monies, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the State Treasurer, and deposited by him to the credit of the State, and shall be paid out and disbursed only pursuant to appropriation first made by the legislature; . . .

The only way that you might be able to receive donations and to somehow use them for the benefit of the home would be to have the fair actually run by some non-profit type organization which you might set up through the local veterans organizations. Such organization might be called Friends of the Veterans Home or something similar to that. Such an organization would, of course, have to comply with all applicable State law regarding the incorporation and operation of non-profit corporations. Such a non-profit corporation could then purchase items from the fair proceeds and donate them directly to

the Veterans Home such as the various veterans organizations do when they donate buses, wheelchairs, and other items to the Veterans Home.

3) If local media would give us free time as public service announcements, could we advertise?

Yes. There is no statute or constitutional provision which would prohibit the Veterans Home from using free public service announcements donated by the local media.

If you have any further questions, please contact Assistant Attorney General Robert J. Udland.

Sincerely,

Nicholas J. Spaeth

vkk