

N.D.A.G. Letter to Kingsbury (Jan. 17, 1989)

January 17, 1989

Rep. Harley Kingsbury
State Representative
House Chambers
State Capitol
Bismarck, ND 58505

Dear Rep. Kingsbury:

Recently, Speaker of the House William Kretschmar forwarded your request for an Attorney General's opinion regarding any constitutional or statutory limitations placed on members of the North Dakota Legislature from doing business with the state of North Dakota.

For your general information, there existed at one time a statute (N.D.C.C. § 54-03-21) which banned legislators (and their spouses) who owned more than 5% in a corporation/business from doing business with the state in excess of \$10,000. This law was adopted as a result of an initiative passed in the primary election of June 29, 1954. The apparent intent of the law was to protect the public from the possibility of a legislator developing a conflict of interest or personally benefiting as a direct result of his or her position in the North Dakota Legislature.

In 1967, the Fortieth Legislative Assembly repealed N.D.C.C. § 54-03-21. Subsequently, the repeal of the measure was successfully referred and placed on the general election ballot in November 1968. But before the measure was put to a vote, the North Dakota Supreme Court issued its decision in Melland v. Johanneson, 160 N.W.2d 107 (N.D. 1968). In Melland, the North Dakota Supreme Court held that N.D.C.C. § 54-03-21 violated the legislators' rights protected by the state constitution and the equal protection clause of the fourteenth amendment to the United States Constitution. Although N.D.C.C. § 54-03-21 was declared unconstitutional, the court noted a constitutional provision did protect the public from conflicts of interest. N.D. Const. art. II, § 43. This provision prohibited legislators from voting on any bill proposed or pending before the legislative assembly if the legislator had a personal or private interest in it unless authorized to do so by the other members of his or her house.

N.D. Const. art. II, § 43, has since been abolished. However its provisions are now a part of Rule 318 of the North Dakota Legislative Assembly House and Senate Rules.

The Fortieth Legislative Assembly also passed N.D.C.C. § 44-08-01.1, which sets forth prohibitions for competitive bidding and the awarding of contracts to the lowest and best, or responsible, bidder. The court pointed out that this statute further protected the public interest sought by the provisions of N.D.C.C. § 54-03-21.

In summary, a statute prohibiting North Dakota legislators or their spouses from doing business with the state of North Dakota no longer exists. Instead, the public is protected by Rule 318 of the North Dakota Legislative Assembly House and Senate Rules, which prohibits a legislator from voting on any bill proposed before the legislative assembly if he or she has a personal or private interest. In addition, there now exists laws providing for a sealed bidding system and the awarding of contracts to the lowest and best, or responsible, bidder.

I hope this information has been helpful. If you have further questions, please contact our office.

Sincerely,

Nicholas J. Spaeth

dfm

cc: Speaker of the House William Kretschmar