

## **N.D.A.G. Letter to Iverson (March 14, 1991)**

March 14, 1991

Mr. Jerry Iverson  
Manager  
North Dakota State Fair  
P.O. Box 1796  
Minot, ND 58702

Dear Mr. Iverson:

Thank you for your February 8, 1991, letter requesting my opinion as to whether the State Fair is required to pay fees to the Rural Fire Department. In your letter you state that the Rural Fire Department has asked you to pay an annual fee and to make payments for prior years. You further state that the city of Minot now provides protection for the State Fair facilities and that the State Fair has never received services from the Rural Fire Department.

North Dakota Century Code (N.D.C.C.) ch. 18-10 governs rural fire protection districts. N.D.C.C. § 18-10-10 requires annual payments by federal, state, and local government agencies for fire protection services. N.D.C.C. § 18-10-15 requires annual payments from any "state or county fair association" as well as other non-governmental groups.

It is apparent that the North Dakota State Fair Association is required to make annual payments to the Minot Rural Fire District for fire protection services for the area outside the city of Minot under one or the other of these sections. My understanding is that in your opinion N.D.C.C. § 18-10-10 is the applicable statute, while the Minot Rural Fire District is of the opinion that N.D.C.C. § 18-10-15 governs.

Both sections are set out below in their entirety.

Any rural fire protection district may elect to enter into a contract with another rural fire protection district to consolidate or cooperate for mutual fire protection and prevention purposes, including ambulance or emergency vehicle services. Any rural fire protection district, or two or more districts operating in conjunction pursuant to this section, may enter into a contract with any federal, state, or local government agency for fire protection service or fire protection cooperation, including ambulance or emergency vehicle services. State and local government agencies shall have the power to contract for fire protection service or fire protection cooperation Federal, state, and local government agencies shall reimburse rural fire protection districts for fire protection services provided on real property owned by such agencies. Reimbursement shall be on a reasonable annual fee based on the agency's acreage [hectarage] within the rural fire protection district, but

in no event shall such fee be an amount greater than if such property had been subject to property tax levies.

N.D.C.C. § 18-10-10 (emphasis supplied).

Any club, lodge, chapter, charitable home, dormitory, state or county fair association, or like organization located within a rural fire protection district and outside the boundaries of any city shall pay to the board of directors of the district annually for fire protection such amount as may be agreed upon, but not less than twenty-five percent of the amount which would be levied against such property under the provisions of this chapter if such property were subject to such levy.

Funds derived from such payments shall be expended by the district for firefighting supplies and equipment and the training of fire department personnel. The board of directors shall file an annual statement with the state fire marshal showing the names of persons or organizations making payments and the amounts of payments made under this section.

N.D.C.C. § 18-10-15 (emphasis supplied). N.D.C.C. § 18-10-15 was initially enacted in 1961. 1961 N.D. Sess. Laws ch. 183. It has not been subsequently amended. The State Fair Association was established by the State Legislature in 1965. 1965 N.D. Sess. Laws ch. 73. N.D.C.C. § 18-10-10 was initially enacted in 1957 and has subsequently been amended in 1969, 1971, and 1979. 1957 N.D. Sess. Laws ch. 165. 1969 N.D. Sess. Laws ch. 227, 1971 N.D. Sess. Laws ch. 232, and 1979 N.D. Sess. Laws ch. 283. The question then is whether for purposes of N.D.C.C. § 18-10-10 the North Dakota State Fair Association is a state government agency.

N.D.C.C. § 4-02.1-01 creates the North Dakota State Fair Association. N.D.C.C. § 4-02.1-15 requires a special fund for the North Dakota State Fair Association to be maintained in the State Treasury. N.D.C.C. § 4-02.1-16 authorizes the State Fair Association to contract in its own name "but as an agency of the state", and further to "make all of its purchases pursuant to the purchasing laws of the state through the office of management and budget." N.D.C.C. § 4-02.1-17 requires that any property obtained in regard to the operation of the North Dakota State Fair Association be obtained and conveyed in "the name of the state of North Dakota, doing business as the North Dakota state fair association." That section further requires written instruments to be executed "in the name of the state of North Dakota." Based upon the foregoing statutes, in my opinion the North Dakota State Fair Association falls within the provisions of N.D.C.C. 18-10-10 regarding state government agencies.

When two statutory provisions are in conflict, the more specific provision must prevail. N.D.C.C. § 1-02-07. N.D.C.C. § 18-10-15 deals generally with nongovernmental associations or organizations. N.D.C.C. § 18-10-10 deals specifically with federal, state and local government agencies. In my opinion, N.D.C.C. § 18-10-10 is the more specific statute regulating the North Dakota State Fair Association and therefore controls.

The statute of limitations for a liability created by statute is six years pursuant to N.D.C.C. § 28-01-16. Therefore, in my opinion, North Dakota State Fair Association's liability to the Minot Rural Fire District for payments pursuant to N.D.C.C. § 18-10-10 only extends back for six years.

Sincerely,

Nicholas J. Spaeth

vkk