

N.D.A.G. Letter to Vogel (April 10, 1989)

April 10, 1989

Hon. Sarah Vogel
Commissioner of Agriculture
Department of Agriculture
State Capitol
Bismarck, ND 58505

Dear Commissioner Vogel:

Thank you for your March 28, 1989, letter concerning the authority of the Commissioner of Agriculture in regard to issuance, renewal, and revocation of livestock dealers' licenses.

Generally speaking, public officials have only such authority as is expressly granted to them by the constitution and statutes, together with that authority which is necessarily implied from express grants of authority. See Am. Fed. of State, Co., & Mun. Emp. v. Olson, 338 N.W.2d 97, 100 (N.D. 1983); Brink v. Curless, 209 N.W.2d 758 (N.D. 1973); Kopplin v. Burleigh County, 47 N.W.2d 137 (N.D. 1951).

It is also a general rule, however, that the state may revoke a license in the exercise of its police power whether or not the power to revoke is expressly or impliedly reserved in the licensing statute or in the certificate of license itself. In other words, the state's power to license includes the power to revoke. Yet, the power to revoke is usually provided by statute. See 53 C.J.S. Licenses §§ 51, 52 (1987); 51 Am. Jur.2d Licenses and Permits 58 (1970). See also March 3, 1987, letter of Attorney General Spaeth to Kent Jones, Commissioner of Agriculture (enclosed).

When a statute expressly sets forth those conditions by which the licensing authority may revoke or refuse to issue or renew a license, the statutory conditions are usually deemed to be exclusive. See Bach v. Florida State Bd. of Dentistry, 378 S.2d 34 (Fla. App. 1980); See also 53 C.J.S. Licenses 52 (1987); 51 Am. Jur.2d Licenses and Permits 58 (1970). The only exception to this rule arises under the state's implied power to revoke a license using its general police power authority in cases where it is clear that the licensee's qualifications are in question, such as for health and safety reasons or fraud in the licensing process. See 53 C.J.S. Licenses 52 (1987); 51 Am. Jur. Licenses and Permits 59 (1970); see also March 3, 1987, letter to Commissioner Jones.

Two sections in N.D.C.C. ch. 36-04 discuss refusal to issue or revocation of a livestock dealer's license. Both of these sections specify conditions or circumstances pursuant to which the Commissioner or the Department may "refuse to issue or renew a license" (N.D.C.C. § 36-04-04(2)) or "refuse to grant a license, or . . . revoke a license" (N.D.C.C. § 36-04-10). These sections contain provisions directly or indirectly relating to revocation based upon the licensee's qualifications or fraud in the application. In other words, the

current statute, N.D.C.C. ch. 36-04, already incorporates as a basis for revoking a license those considerations which would allow the state to revoke even in the absence of a statute (e.g., health and safety considerations and fraud in the application).

In this case, therefore, the general rule would apply and the conditions for revocation stated in N.D.C.C. ch. 36-04 are exclusive. Even though the Commissioner may believe that other circumstances not stated in N.D.C.C. ch. 36-04 may have some bearing on the licensee's ability to continue to act pursuant to the laws as a licensed livestock dealer, those circumstances are not sufficient cause for revocation, refusal to issue, or refusal to renew. Only the express statutory provisions of N.D.C.C. §§ 36-04-04(2), 36-04-10, and authority necessarily implied from those provisions may be a basis for revocation, refusal to issue, or refusal to renew a license.

N.D.C.C. ch. 36-04 would have to be amended in order for the Commissioner to revoke, refuse to issue, or refuse to renew a license pursuant to other grounds, including the two grounds cited in your letter as examples.

Sincerely,

Nicholas J. Spaeth

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Enclosure