

## **N.D.A.G. Letter to Gibbens (May 2, 1988)**

May 2, 1988

Ms. Lisa Beckstrom Gibbens  
Towner County State's Attorney  
P.O. Box 601  
Cando, ND 58324

Dear Ms. Gibbens:

Thank you for your letter of April 20, 1988, inquiring as to the prohibition contained within N.D.C.C. § 40-13-01. The last sentence of this particular statute states that no person in default to the municipality "shall be eligible to any office."

There are three sentences in N.D.C.C. § 40-13-01. All three sentences provide qualifications that must be met before persons may be eligible to a municipal office. The first two sentences speak in terms of "eligible to hold" the office in question. The last sentence, which is the subject of your inquiry, omits the word "hold" and instead speaks in terms of "eligible to any office."

In 1982 N.D. Att'y Gen. Op. 96, this office concluded that an individual who owns real estate in a city against which there are unpaid, delinquent real estate taxes is not ineligible to hold a city office. This Attorney General's opinion was based upon the last sentence of N.D.C.C. § 40-13-01 and the history leading up to the ultimate enactment of this particular statute.

Your question is whether the default disqualification provided for in the last sentence to this statute applies only at the time the person assumes the office or whether it continues during the person's term of office as well.

There are several North Dakota Supreme Court cases discussing the term "eligibility" as used in connection with an office where there are no explanatory words surrounding this term. The following excerpt from Nielson v. Neuharth, 331 N.W.2d 58 (N.D. 1983), is applicable to this discussion:

Quoting from a well-reasoned Idaho case, Bradfield v. Avery, 16 Idaho 769, 102 P. 687 (1909), this court said in Enge v. Cass:

". . . where the word 'eligibility' is used in connection with an office, and there are no explanatory words indicating that such word is used with reference to the time of election, it has reference to the qualification to hold the office rather than the qualification to be elected to the office." 28 N.D. at 226, 148 N.W. at 609.

Id. at 60.

The term "eligibility" is used in N.D.C.C. § 40-13-01 without the use of any explanatory words. Applying the prior decisions of the supreme court, it must be concluded that the term "eligibility" has reference to the qualification to hold the office. As such, the provision in N.D.C.C. § 40-13-01 that no person in default to the city shall be eligible to any office continues so long as that person holds the office in question. This conclusion is supported by the conclusion in 1982 N.D. Att'y Gen. Op. 96 and conforms to the phrase "eligible to hold" as used in the other sentences in N.D.C.C. § 40-13-01.

Sincerely,

Nicholas J. Spaeth

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