

**N.D.A.G. Letter to Sanstead (May 16, 1989)**

May 16, 1989

Dr. Wayne G. Sanstead  
Superintendent  
Department of Public Instruction  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Superintendent Sanstead:

Thank you for your May 5, 1989, letter requesting approval to adopt emergency administrative rules.

N.D.C.C. § 28-32-03(2)(b) states that an administrative agency, subject to applicable constitutional or statutory provisions, may cause an emergency rule to become effective immediately upon approval by the Attorney General or at a date prior to the usual effective date of administrative rules where the agency determines the effective date is necessary because of imminent peril to the public health, safety, or welfare. The statute also requires that the agency's finding of the need of an emergency rule and a brief statement of reasons therefor be filed with the rule. The statute concludes by stating that the agency shall take appropriate measures to make emergency rules known to every person who may be affected by them.

Neither N.D.C.C. § 28-32-03 nor any other statute provides that the Attorney General is required to approve an agency's determination that the need for an emergency rule exists. Instead, the statute requires the agency to make that finding and to file its reasons for that determination with the rule.

Therefore, I am unable to respond to your request for approval of your determination of the need for an emergency administrative rule. Instead, you should comply with the provisions outlined above if you have determined that an emergency rule is needed.

Sincerely,

Nicholas J. Spaeth

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