N.D.A.G. Letter to Meyer (May 27, 1986)

May 27, 1986

Honorable Walter Meyer
State Senator
Flasher, ND 58535

Dear Senator Meyer:

Thank you for your letter concerning N.D.C.C. Ch. 11-26. This chapter, adopted in 1935, created county debt adjustment boards for each county in North Dakota. It provides that members of a county debt adjustment board are to be appointed by the judges of the district court. N.D.C.C. § 11-26-01. The board is authorized to determine the financial condition of a debtor. N.D.C.C. § 11-26-05. The general duties of the board are to "attempt to conciliate" between the debtor and the creditor; to "advise and assist in arriving at a fair basis for debt adjustment, refinancing and payment;" and to "advise, counsel and assist" the parties in reaching agreement on future conduct of the debtor and creditor. N.D.C.C. § 11-26-06. A meeting of a county debt adjustment board shall be called by the clerk of court upon application by a debtor or creditor and payment of a $5.00 fee, which may be waived if a debtor files an affidavit saying he is financially unable to pay the fee. N.D.C.C. § 11-26-04.

In your letter, you state that the South Central District Court has failed to implement this law in Morton County and other counties in the judicial district. You ask for an opinion on the validity of the law.

In my opinion, the law is valid. It has never been repealed by the Legislature and there is no reported supreme court case declaring it to be invalid. All statutes are entitled to a presumption of validity. N.D.C.C. § 1-02-38(2).

It is possible that county debt adjustment boards may be of assistance in helping to resolve the current economic difficulties being experienced by our farmers and businesses. Both debtors and creditors would generally be assisted if they were afforded an opportunity to discuss their difficulties in a non-adversarial proceeding. While there is no legislative history on this law, section 6 of the original bill referred to the assistance that the county debt adjustment boards could provide with respect to the federal refinancing programs that were in effect in 1935. Similar financing programs are being used today. For example, the state of North Dakota and the Federal Land Bank of St. Paul have established a program for debt restructuring. In some cases, third party debts may need to be resolved to make this program work. In addition, FmHA recently announced that it would not extend deferral relief to delinquent FmHA farm borrowers (as required by 7 U.S.C. 1981(a) and Judge Van Sickle's permanent injunction in Coleman v. Block, 580 F.Supp. 194 (N.D. 1984)), unless the debtor first attempts voluntary debt adjustment with other creditors. 50 Fed. Reg. 45,775 (Nov. 1, 1985) (to be codified at 7 C.F.R.

1951.44(b)(5)). Thus, county debt adjustment boards may be of some utility in farmers' efforts to qualify for FmHA loan deferral.

The 1985 Legislature created two programs to assist distressed debtors. These are the credit counseling program (N.D.C.C. §§ 4-01-19.2, 4-01-19.3), which provides one-on-one financial advice to debtors, and the credit review board (N.D.C.C. Ch. 6-09.10), which provides negotiation assistance to farmers threatened with foreclosure and also can provide a loan subsidy on a home quarter. These programs are consistent with the purposes of a county debt adjustment board but would not preempt or replace N.D.C.C. Ch. 11-26.

In determining whether this law is valid, I have also considered whether the Legislature may give the responsibility to appoint members of the county debt adjustment board to district court judges. N.D. Const. Art. VI, § 10, provides:

No duties shall be imposed by law upon the supreme court or any of the justices thereof, except as are judicial, nor shall any of the justices exercise any power of appointment except as herein provided.

The first clause of this section has been interpreted in Kermott v. Bagley, 19 N.D. 345, 124 N.W. 397 (N.D. 1910), where a law requiring district court justices to issue druggist's permits was challenged. The Supreme Court held that while the Legislature could not impose such duties on the Supreme Court, it was authorized to impose clearly administrative duties on district court judges. The Kermott decision also noted that issuance of permits did involve some quasi-judicial functions although the conduct was administrative in nature. Conduct that is purely legislative, executive, or ministerial was not reached in this decision. While it might be argued that the appointment power has no quasi-judicial element, I belief that the court's involvement in the appointment process partakes of a quasi-judicial nature because the conciliation process before a credit review board may tend to lessen the number of collection cases that go to court thereby assisting in overall administration of the court system. In this sense, the appointment authority is analogous to a court's authority to appoint a receiver over property in litigation.

Based on the Kermott v. Bagley decision, I believe that the Legislature has the authority to impose the appointment function upon the district court judges.

If you have any further questions about the issues in this letter, please do not hesitate to call or write me.

Sincerely,

Nicholas J. Spaeth

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