

N.D.A.G. Letter to Neugebauer (Aug. 2, 1985)

August 2, 1985

Mr. Brian D. Neugebauer
West Fargo City Attorney
P.O. Box 458
West Fargo, ND 58078-0458

Dear Brian:

Thank you for your letter of July 10, 1985, concerning N.D.C.C. § 40-11-06 and its requirement for publication of ordinances which impose "any penalty, fine, imprisonment, or forfeiture for a violation of its provisions" According to your letter, you question whether an ordinance which contains no criminal penalty but does include provisions on the suspension or revocation of a license or franchise upon a violation of its provisions must be published. We note that the key terms in this particular ordinance ("penalty" and "forfeiture") are not defined within N.D.C.C. Title 40.

Words which are not specifically defined within the Century Code must be understood in their ordinary sense unless a contrary intention plainly appears. N.D.C.C. § 1-02-02. We have reviewed the definitions "penalty" and "forfeiture" as provided for in Webster's New Collegiate Dictionary (1975). The term "penalty" has the meaning of a suffering in person, rights, or property which is annexed by law or judicial decision to the commission of a crime or public offense. The term also involves "the suffering or the sum to be forfeited to which a person subjects himself by agreement in case of nonfulfillment of stipulations." The term "forfeiture" is defined to mean the loss of property or money because of a breach of legal obligation.

Although these ordinary sense definitions of these particular terms do not clearly include licenses and franchises as penalties or forfeitures, it seems to us that strong arguments can be made for their inclusion within the definitions. As both involve rights and property interests, the loss of which may occur for commission or non-commission of certain events provided for in the ordinance, it is possible that a penalty will be suffered or that a forfeiture will have occurred through noncompliance with the ordinance.

Therefore, it would be my advice that ordinances which contain provisions on the suspension or revocation of licenses or franchises be treated as ordinances subject to N.D.C.C. § 40-11-06. In other words, it seems to me to be the safer course to cause such ordinances to be published as opposed to running the risk of having their effectiveness voided as a result of non-publication.

Sincerely,

Nicholas J. Spaeth

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