

OPINION
76-102

July 16, 1976 (OPINION)

Mr. David Strauss

State Executive Director

North Dakota Democratic-NPL Party

Kennedy Memorial Center

1902 East Divide Avenue

Bismarck, ND 58501

Dear Mr. Strauss:

This is in response to your letter dated July 13, 1976, requesting an opinion " . . . relative to the legality of the distribution of paper shopping bags in conjunction with Senator Burdick's campaign for reelection to the U.S. Senate." You indicate in your letter that Senator Burdick desires to distribute free paper shopping bags throughout the state during his candidacy. You further indicate that the shopping bags have little pecuniary value, costing approximately five to ten cents per bag when purchased in bulk.

You go on to state the following:

. . . there is some question as to whether activity of this type is prohibited by the North Dakota Century Code.

The applicable code amendment is as follows:

12.1-14-03. SAFE GUARDING ELECTIONS. A person is guilty of a Class A misdemeanor if, in connection with any election, he;

1. . . .

2. offers, gives, or agrees to give a thing of pecuniary value to another as consideration for the recipients voting or withholding his vote or voting for or against any candidate or issue or for such conduct by another;

It is our opinion that this distribution of shopping bags would not violate the terms of Section 12.1-14-03. The items in question are of such slight value that they could not reasonably be held to constitute consideration given in return for the recipients vote. Rather, the distribution of such items are intended (sic) to serve as advertising and in reality serve only that purpose.

Senator Burdick was informed that in the past the Attorney General's Office has made informal statements which indicate that the giving of pens, pencils or matchbooks has not violated

the North Dakota Century Code. Those items, it was held, do not have sufficient pecuniary value to constitute consideration within the meaning of the statute.

It is our opinion and we would conclude that distribution of campaign advertising paraphernalia such as pens, pencils, matchbooks and other similar materials, while possessing some pecuniary value, are usually of a small or insignificant monetary value, and when generally distributed in connection with political campaigns for apparent advertising purposes, would not, in itself, violate the provisions of Section 12.1-14-03. The relevant portion of the statute quoted, however, is not whether the advertising materials have a "pecuniary value", but whether the distribution of those materials are accomplished "as consideration for" the recipient's vote in a particular fashion or his withholding a vote. It would seem that if the materials you describe are simply distributed with no agreement or understanding by either the donor or the recipient that a vote will be given or withheld, then no violation has occurred.

In conclusion, we do not believe that it was the intent of the North Dakota Legislature to prohibit, per se, the distribution of small advertising paraphernalia that are of limited or insignificant monetary value, as you have described in your letter, when that distribution is not "in consideration for" a vote or failure to vote. Of course, what constitutes "a thing of pecuniary value" becomes a matter of fact which may vary with each item distributed. It may be possible to influence some people with gifts valued at ten cents or less, but this seems unlikely. It would seem that the greater the pecuniary value of the gift, the stronger the presumption that its distribution was in consideration for a vote or lack of vote.

I trust that this is a sufficient response to your inquiry.

Sincerely,

ALLEN I. OLSON

Attorney General