

**OPINION
76-157**

August 24, 1976 (OPINION)

Mr. Albert A. Wolf

Wheeler, Wolf, Wefald & Peterson, P.C.

Dakota Northwestern Bank Building

P.O. Box 773

Bismarck, North Dakota 58501

Dear Mr. Wolf:

This is in response to your letter of August 11, 1976, wherein you request an opinion of this office relative to the application and interpretation of Chapter 43-09 of the North Dakota Century Code. You submit the following facts and inquiry in your letter:

"At the regular July 13, 1976 meeting the State Electrical Board asked that I request an Attorney General's Opinion as to two questions raised regarding the interpretation and application of Chapter 43-09 of the North Dakota Century Code. Chapter 43-09 requires that an electricians license of one class or another shall be required to be held by any person who engages in the installation of electrical wiring apparatus and equipment to structures in the State of North Dakota, with three specific exceptions set forth in Section 43-09-16 regarding employees of public utilities, employees of telephone, telegraph and radio communication service and employees of appliance companies installing appliances and energizing the same to existing electrical receptacles. Rules and regulations have been adopted by the State Electrical Board to further carry out the intent of this statute. Section 43-09-09 contains the specific language that "Every person, partnership, company, corporation, or association that undertakes or offers to undertake with another a plan, lay out, supervise, install, make additions, make alterations, or make repairs in the installation of wiring apparatus or equipment for electrical light, heat, or power, shall apply to the Board for a license. . . ."

The first question is whether a member of the executive committee of a church association, who holds no electrical license, can do the electrical wiring in a church building owned by such association. The second question is whether a member of the executive committee of the governing body of an educational institution holding no license in the State of North Dakota could do the electrical wiring for the construction of a school building owned by the institution governed by the executive committee.

In answering these two questions the issue of whether the partnership person or association is offering to undertake with

another the language of Section 43-09-09 or whether another is not involved in such a relationship."

You have called our attention to the relevant statute, Section 43-09-09, of the North Dakota Century Code, particularly emphasizing the wording upon which the interpretation must rest.

This office has, upon previous occasion, made the distinction of the application of laws to corporate entities as separate "fictitious persons" in legal theory. Such a distinction was made in the application of the Sunday Closing Laws of North Dakota, in response to a question as to whether a grocery which is incorporated and operated by a majority stockholder would qualify as applied to the "owner-manager" concept required by the statute. In our response we pointed out this distinction as follows:

"In the instance of your present inquiry, the same basic situation would appear to exist if incorporation of such a business were to be effected. In the event a corporation is created, the legal effect is to create a fictitious person in legal theory. This would result in a separation of the "owner-manager concept" since the corporation would only be able to act through its employees and officers. It would also appear that the owner of the stock or a majority of the stock would still only be an employee or officer of the owner of the grocery, which would be the corporation itself. To draw the line of distinction as applicable in such an instance, it would appear that the major stockholder would own the stock only and the fictitious person, i.e., the corporation, would own the grocery establishment. Thus, it is in keeping with the opinion heretofore expressed by this office that in order to come within the exemption set forth under Section 12.1-30-03(28) of the North Dakota Century Code, as amended, the owner must also be the manager of the grocery store. If the grocery store establishment is incorporated, it would appear that the corporation would own the store and someone else, employee, officer, or majority stockholder, as the case may be, would be the manager.

In direct response to your inquiry then, we are of the opinion that if a family grocery store is incorporated and the current owner-manager is majority shareholder of that corporation, the owner-manager concept permitting the exemption under Section 12.1-30-03(28) of the North Dakota Century Code, as amended, is then destroyed and such business would not then be eligible for the exemption. The division of ownership and managership no longer exists.

With regard to your second question concerning whether the current owner-manager must hold the majority stock in the corporation individually in order to qualify for the exemption, our response to your first question makes this observation moot as it would not be a material consideration to the issue since the "owner-manager" concept does not exist in such instances that such a grocery store is incorporated."

We see no difference in the issue which is presented by your letter

and do not feel that the "fictitious person" theory differs significantly in respect to associations, unincorporated organizations, or other similar entities in application of the requirements of Section 43-09-09 of the North Dakota Century Code.

You have also stated your opinion in the cover letter of your request for an official opinion, with which stated opinion we find we are in accord, which provides that:

"The person who is actually proposing to do electrical work without a license is undertaking with another, that is his association, to make such installations and that he is not exempted from licensing requirements under Section 43-09-16. The overall purpose of protecting the members of the public who enter into such buildings must be recognized in evaluating the application of these provisions. The intent of the language in the two sections is apparently to allow an owner of property to wire his own property and on the other hand to allow employees of utilities to do electrical wiring where they are primarily concerned with work pertaining to the manufacturer and distribution of electrical energy or with the incidental electrical work relating to the installation of telephone, telegraph and radio communication systems."

We trust that the foregoing observations, comments and expressions will adequately set forth the opinion upon the matters submitted.

Sincerely,

ALLEN I. OLSON

Attorney General