

Office of the Attorney General
State of North Dakota

Opinion No. 82-27

Date Issued: April 14, 1982
Requested by: Edwin C. Becker
Director North Dakota Economic Development Commission

--QUESTION PRESENTED--

Whether an alternate commissioner of the Economic Development Commission who is serving as a substitute for an absent regular member of the Commission may participate by voting in decisions relating to the Industrial Revenue Bond Guarantee Program.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that an alternate commissioner of the Economic Development Commission may not participate by voting in the decision-making process relating to the Industrial Revenue Bond Guarantee Program.

--ANALYSIS--

Section 54-34-03 of the North Dakota Century Code provides that the Economic Development Commission is to be comprised of the Governor as Chairman, and eight regular members who are appointed by the Governor. There is no statutory or constitutional provision for alternate members to substitute and act for any of the regular commission members who are absent or disqualified from acting. In the absence of any statutory or constitutional authority providing for the appointment and substitution of alternate members for regular members of the Commission, an alternate commissioner has no authority to exercise power by voting on actions taken by the Commission. See 2 Am.Jur.2d, Administrative Law, § 197. Further, if an alternate commissioner participates in the decision-making process by voting, the action of the Commission is subject to challenge as being taken by persons without legal authority or legal responsibility for the decision. This challenge may be made even though a sufficient number of regular commissioners were present and voted in favor of the action taken. See 2 Am.Jur.2d, Administrative Law, § 197 and Davis, Administrative Law Treatise, (1980).

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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