

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 88-1

Date issued: January 18, 1988  
Requested by: Nicholas B. Hall  
Walsh County State's Attorney

- QUESTION PRESENTED -

Whether an embossed notary seal is required on any document filed with a register of deeds.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that an embossed notary seal is required on any document filed with a register of deeds unless the notary seal is applied to the document by a notary public not governed by N.D.C.C. ' 44-08-06.

- ANALYSIS -

The 1987 Legislative Assembly enacted House Bill No. 1097 which amended N.D.C.C. ' 44-08-06 to require seals of an officer of this state to be embossed and surrounded by a border. 1987 N.D. Sess. Laws ch. 544. The legislative history of the enactment of this law indicates an intention to require notaries public to use a seal with a raised design rather than a stamped or imprinted design. The purpose of the embossed seal was to more clearly indicate an original acknowledgement and to prevent confusion with photocopied acknowledgements. Hearings on H.1097 Before the House State and Federal Government Committee, 50th Leg., (January 13, 1987).

As originally introduced before the Legislative Assembly, House Bill No. 1097 did not include the word "embossed." At the request of the House Committee on State and Federal Government, the word "embossed" was added to the bill to more clearly indicate the requirement of a raised design seal. Id.

The 1987 legislative amendment to N.D.C.C. ' 44-08-06 did not discuss or reference N.D.C.C. ' 11-18-15. This latter statute states that a notary seal on any document filed with a register of deeds may be in either a stamped or an imprinted form. No mention is made within this statute of the use of embossed seals as now required by N.D.C.C. ' 44-08-06.

Generally, words used in a statute must be understood in their ordinary and commonly accepted sense unless a contrary intention appears within the statute. N.D.C.C. ' 1-02-02. The term "stamped" usually refers to the impression or mark which is made by stamping or imprinting. Webster's New Collegiate Dictionary (1975) at 1133. The term "imprint" usually refers to a mark or depression occurring as a result of pressure. Id. at 577. The term "embossed" usually refers to a mark which has been raised in relief from a surface. Id. at 371.

The commonly understood and accepted meanings of these statutory words along with the legislative history as to the intent behind the enactment of House Bill No. 1097 results in the conclusion that an embossed seal is dissimilar to a stamped or imprinted seal. An embossed seal involves an impression which is raised from the surface of the document whereas a stamped or imprinted seal is affixed or applied to the document without any requirement of raised relief.

The 1987 legislative amendment to N.D.C.C. ' 44-08-06 requires notaries public in North Dakota to use an embossed seal. However, the failure to amend N.D.C.C. ' 11-18-15 results in an absurd situation where the use of an embossed seal by a North Dakota notary public upon a document to be filed with the register of deeds will not be accepted because the seal is not stamped or imprinted. A North Dakota notary public who acts in compliance with N.D.C.C. ' 44-08-06 (using an embossed seal) may find the document rejected by a register of deeds who must abide by the requirements of N.D.C.C. ' 11-18-15. A North Dakota notary public who acts in compliance with N.D.C.C. ' 11-18-15 (using a stamped or imprinted seal) will act in violation of N.D.C.C. ' 44-08-06. Surely, the conflict between the two statutes can only be described as absurd and unjust.

The North Dakota Supreme Court has stated on several occasions that statutes must be construed to avoid absurd and ludicrous

results. The court has further stated that if adherence to the strict letter of statutes leads to such results, one must resort to extrinsic aids to interpret the statute. Olmstead v. Miller, 383 N.W.2d 817 (N.D. 1986); Stutsman County v. State Historical Society of North Dakota, 371 N.W.2d 321 (N.D. 1985). An available extrinsic aid for this particular statutory dilemma is provided by N.D.C.C. ' 1-02-07. This statute states that whenever a general provision in a statute conflicts with a special provision in the same or another statute, the two must be construed, if possible, so as to give effect to both provisions. However, N.D.C.C. ' 1-02-07 further states that if the conflict between the two provisions is irreconcilable, the special provision must prevail and must be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that such general provision shall prevail.

As previously indicated, the provisions of N.D.C.C. " 44-08-06 and 11-18-15 cannot be reconciled so as to give effect to both provisions. The requirement for the use of an embossed seal by state officers is obviously a general provision. The requirement of a stamped or imprinted seal on documents to be filed with the register of deeds is a special provision. However, the legislative history surrounding the enactment of House Bill No. 1097 (1987 N.D. Sess. Laws ch. 544) clearly indicates a desire to require embossed seals of all officers using seals -- especially notaries public. In light of this clearly stated legislative intent to apply the requirement of an embossed seal to all notaries public, the general provision must prevail over the special provision.

Therefore, it is my opinion that the general requirement of an embossed seal as provided for by the 1987 amendments to N.D.C.C. ' 44-08-06 should be given general application. To further this legislative intent with respect to documents filed with a register of deeds, one must conclude that an embossed notary seal must be used on a document to be filed with a register of deeds and, when so used, may be received and filed by that register of deeds assuming all other requirements for filing are satisfied.

However, the submission of a document to a register of deeds using only a stamped or imprinted seal, but not an embossed seal, may be received and filed by the register of deeds

pursuant to N.D.C.C. ' 11-18-15 in a limited situation. This limited situation would occur only pursuant to N.D.C.C. ' 47-19-14.1 which provides for the recognition of notarial acts performed by notaries public commissioned in a jurisdiction other than North Dakota. In this limited situation, the conflict between the 1987 legislative amendments to N.D.C.C. ' 40-08-06 (which does not apply to notaries public commissioned in a jurisdiction other than North Dakota) and N.D.C.C. ' 11-18-15 would not be present. In this situation, we may then apply the actual words of the statute as found at N.D.C.C. ' 11-18-15.

In summary, an embossed notary seal is required on any document filed with a register of deeds unless the notary seal is applied to the document by a notary public not governed by N.D.C.C. ' 44-08-06.

- EFFECT -

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

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