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Office of the Attorney General
State of North Dakota

*1 January 20, 1999

Honorable Rod Froelich
600 E. Boulevard Ave.

Dear Representative Froelich:

Thank you for your December 10, 1998, letter asking whether county legal notices may be published in an adjoining out of state county pursuant to North Dakota Century Code (N.D.C.C.) § 46-05-01.

N. D.C.C. § 46-05-01 establishes the qualifications of any newspaper in North Dakota to publish any official legal notice. The section also provides that in a county in which no newspaper is published legal notices "may be published in a newspaper published in an adjoining county" having circulation in the county without a newspaper.

You advise that no newspaper is currently published in Sioux County but that The McLaughlin Messenger, published in Corson County, South Dakota, which is adjacent to the southern border of Sioux County, has subscribers in Sioux County. You ask whether the phrase "adjoining county" in section 46-05-01 embraces Corson County, South Dakota.

In my opinion, the reference to "adjoining county" in N.D.C.C. § 46-05-01 refers to an adjoining North Dakota county. The substantive language in the last sentence of N.D.C.C. § 46-05-01 was enacted in 1897 in an amendment to Rev. Codes of 1895, § 1804. See 1897 Sess. Laws ch. 98, § 1. The amendment provided "that in counties in which no newspaper is published any notices required by law to be published may be published in a newspaper printed in an adjoining county having a general circulation in said county." See 1897 Sess. Laws ch. 98, § 1.

Rev. Codes of 1895, § 1804 and others relating to qualifications of newspapers in the state entitled to publish official legal notices were explained in Knight v. Barnes, 75 N.W. 904, 906 (N.D. 1898). The issue in that case was whether a Minneapolis printing firm was eligible in 1898 to furnish a county with books and bindery work and printed blanks and stationery under Rev. Codes of 1895, § 1807 which provided that "[a]ll county printing shall be done in the state, and if practicable in the county ordering the same."

The Minneapolis firm argued that section 1807 applied only to legal notices and cited sections 1804, 1805 and 1806 of the Rev. Codes of 1895. In dismissing that argument, the North Dakota Supreme Court explained that "[t]hose sections [[including section 1804] relate to newspapers published within the state, and declare, in effect, that only such newspapers as are of the character defined in these statutes shall be 'entitled' either to publish legal notices, 'or to do any public printing for the state or any county....'" Id. at 906 (emphasis added). The su-

preme court further advised that the purpose of these sections was "to define the kind of newspapers within the state qualified to do such printing." Id. at 906 (emphasis added). The language of the 1897 amendment which is substantially the same as the last sentence of N.D.C.C. § 46-05-01 has essentially remained unchanged since its enactment in 1897. The construction of that language in Knight v. Barnes has been acquiesced in and adopted by subsequent legislatures, which have not substantially changed the language. "The construction of a statute by the courts, supported by long acquiescence on the part of the Legislative Assembly, or by the continued use of the same language, or by failure of the Legislative Assembly to amend the law, is evidence that such construction is in accordance with the legislative intent." Blair v. City of Fargo, 171 N.W. 2d 236, 240 (N.D. 1969). Accord, Lapland v. Stearns, 54 N.W. 2d 748, 753 (N.D. 1952); State v. Broderick, 27 N.W. 2d 849, 866 (N.D. 1947). See also letter from Attorney General Nicholas J. Spaeth to Maury C. Thompson (July 11, 1985) (assuming the reference to "adjoining county" in N.D.C.C. § 46-05-01 referred to a North Dakota county).

Sincerely,
*2 Heidi Heitkamp
Attorney General

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