LETTER OPINION
95-L-196

August 14, 1995

Honorable Alvin A. Jaeger
Secretary of State
600 East Boulevard Avenue
Bismarck, ND 58505-0500

Dear Secretary of State Jaeger:

Thank you for your letter requesting my opinion on the meaning of the terms "revoke" and "cancel" as used in N.D.C.C. chs. 43-07 and 44-06 dealing with contractors and notaries public and the availability of sanctions not expressly mentioned in those chapters.

N.D.C.C. § 43-07-15 dealing with cancellation of contractors' licenses provides, in part:

> If the registrar determines that the licensee has been guilty of any of the acts or omissions charged, he shall cancel or suspend the contractor's license. A contractor aggrieved by a decision of the registrar in suspending or canceling his license may appeal such decision to the district court of his county of residence or Burleigh County. Any licensee may not obtain a license under any name during the period of cancellation or revocation. A "licensee" whose license is canceled or revoked includes any officer, director, agent, member, or employee of the licensee. The provisions of chapter 28-32 govern any appeal and proceedings hereunder.

(Emphasis supplied.)

N.D.C.C. § 43-07-17 provides:

> A licensee whose license has been canceled may not be relicensed during the current calendar year in which the decision to cancel the license was made.

(Emphasis supplied.)

N.D.C.C. § 44-06-11, dealing with notice of revocation of a notary's commission, uses the term "revoked." This section was amended in Senate Bill 2215 and continues the use of the term "revocation." 1995 N.D. Sess. Laws ch. 424. Senate Bill 2215 is effective August 1, 1995. On the other hand, N.D.C.C.

§§ 44-06-13 and 44-06-13.1, dealing with wrongful notarial conduct, use the term "canceled." N.D.C.C. § 44-06-13.1, as amended by Senate Bill 2215, retains the use of the term "cancel." 1995 N.D. Sess. Laws ch. 424.

You raise the question whether the terms "cancel" and "revoke" are used interchangeably or whether they are intended to mean something different.

The primary purpose of statutory construction is to ascertain the intent of the Legislature and the intent must first be sought from the language of the statutory provision itself. Production Credit Association of Minot v. Lund, 389 N.W.2d 585, 586 (N.D. 1986). Words in a statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, and any words explained in the North Dakota Century Code are to be understood as explained. N.D.C.C. § 1-02-02. The terms "cancel" and "revoke" are not defined in either N.D.C.C. ch. 43-07 or ch. 44-06 or in any other applicable or analogous part of the North Dakota Century Code. The terms "cancellation" and "revocation" are defined in N.D.C.C. § 39-06-23. However, those definitions are specialized definitions with distinct meanings in the driver's license section and that statute has no logical applicability to N.D.C.C. ch. 43-07 or ch. 44-06; the definitions are specifically intended for use in title 39 as indicated in the introductory clause of N.D.C.C. § 39-06-23.

Consequently, as used in N.D.C.C. chs. 43-07 and 44-06, the terms "revoke" and "cancel" are to be understood in their ordinary sense. N.D.C.C. § 1-02-02. Pertinent dictionary definitions for these two terms are very similar. "Cancel" has been defined to mean "[t]o annul or invalidate," and "revoke" to mean "[t]o void or annul by recalling, withdrawing, or reversing." American Heritage Dictionary 233, 1058 (2d coll. ed. 1991). Similarly, Black's Law Dictionary has defined "cancel" to mean "[t]o obliterate; to strike or cross out. To destroy the effect of an instrument by defacing, obliterating, expunging, or erasing it. To revoke or recall; to annul or destroy, make void or invalid, or set aside." It has defined "revoke" as "[t]o annul or make void by recalling or taking back. To cancel, rescind, repeal, or reverse, as to revoke a license or will." Black's Law Dictionary 206, 1322 (6th ed. 1990).

Likewise, a synonym for "cancel" is "revoke" and a synonym for "revoke" is "cancel." West's Legal Thesaurus/Dictionary 112, 664 (1985).

Courts have similarly viewed or defined the terms “revoke” and “cancel” as having the same meaning. State v. Ayala, 610 A.2d 1162, 1170 (Conn. 1992) (“revoke” means to annul or make void by recalling or taking back; to cancel, rescind, repeal, reverse, as to revoke a license or will) (citing Black’s Law Dictionary); Marmorstein v. New York State Liquor Authority, 144 N.Y.S.2d 275, 277 (N.Y. Sup. Ct. 1955) (cancellation and revocation are synonymous and “revoke” means to recall, and with reference to privileges to annul, repeal, rescind, cancel); Halfmoon v. Moore, 291 P.2d 846, 848 (Idaho 1956) (“revoke” means to annul or make void by recalling or taking back; to cancel) (citing dictionary definitions).

Based on the foregoing, and the context in which these two terms are used, it is my opinion that the terms “revoke” and “cancel” are intended to mean the same thing and are used interchangeably in N.D.C.C. §§ 43-07-04, 43-07-10, 43-07-15, and 43-07-17 and in N.D.C.C. §§ 44-06-11, 44-06-13, and 44-06-13.1. Had the Legislative Assembly intended the terms to have different meanings, it easily could have defined them differently as was done in N.D.C.C. § 39-06-23, in the context of driver’s licenses.

You also ask whether you have the authority to invoke sanctions that are not expressly referenced in either N.D.C.C. ch. 43-07 or N.D.C.C. ch. 44-06 in taking administrative action against an offending contractor or notary public as part of a contested case.

The only sanctions expressly provided for in N.D.C.C. ch. 44-06, dealing with violations by notaries public, are revocation or cancellation of the notary commission. In Wisdom v. North Dakota Real Estate Commission, 403 N.W.2d 19 (N.D. 1987), a real estate broker challenged a disciplinary reprimand as not being authorized by the statute involved, which did, however, authorize the Real Estate Commission to suspend a license. The court noted:

> Generally, if authorized by law and if justified in fact, imposition of a regulatory sanction by an administrative agency is a discretionary exercise of power. . . . The only question here is whether a reprimand is authorized by law. Since a reprimand is essentially akin to a brief suspension, we conclude that it is comprehended within the power to suspend.

Id. at 22. The court in Wisdom also cited to N.D.C.C. § 31-11-05(27), one of the maxims of jurisprudence, which states that "[t]he greater contains the less."

Likewise, in McKey & Poague, Inc. v. Stackler, 379 N.E.2d 1198, 1205 (Ill. App. Ct. 1978), the court construed a real estate broker and salesperson licensing act which provided for revocation of a broker's certificate. The court concluded that the term "revocation," within the meaning of the law, was not limited to only revocation of a certificate but also logically included a 60-day suspension. Id.

Thus, it is my opinion that because the Secretary of State has the authority to revoke or cancel a notary commission, the Secretary of State also has the authority, in the exercise of discretion, to impose a lesser included sanction to revocation, such as issuing a reprimand, suspending a notary's commission, or placing the notary on some sort of probationary or special review status with reasonable conditions such as completion of a training course. Although the Secretary of State has the authority to cancel or suspend a contractor's license, it is my further opinion that the Secretary of State can likewise impose a lesser related sanction on an offending contractor under N.D.C.C. ch. 43-07.

However, the imposition of a fine or costs in a contested case is a different matter. There is no explicit statutory authority in either N.D.C.C. ch. 44-06 or ch. 43-07 to impose a fine or costs as a result of a violation in a contested case. Although it has been held that a court has the authority to impose costs on a judge or attorney who is subject to a disciplinary action, it does not necessarily follow that an administrative agency has that same inherent or constitutional authority. See Matter of Cieminski, 270 N.W.2d 321, 333-35 (N.D. 1978); Matter of Maragos, 285 N.W.2d 541, 546 (N.D. 1979). Since imposition of a fine or costs in a contested case is not expressly authorized by N.D.C.C. ch. 44-06 or ch. 43-07, and since imposition of a fine or costs is not essentially akin to a revocation or a suspension or included therein, it is my further opinion that the Secretary of State does not have the authority in a contested case to impose a fine or costs on an offending notary public or contractor. See Wisdom v. North Dakota Real Estate Commission, 403 N.W.2d at 22.

However, I believe the Secretary of State has more latitude in cases involving informal disposition or settlement. It is axiomatic that the law favors settlement and discourages litigation wherever practical. E.g., Brunsoman v. Scarlett,

465 N.W.2d 162 (N.D. 1991); Hastings Pork v. Johanneson, 335 N.W.2d 802 (N.D. 1983). N.D.C.C. § 28-32-05.1 provides generally that informal disposition may be made of any contested case, non-contested case, or other administrative proceeding or any part or issue thereof by a stipulation, settlement, waiver of hearing, consent order, or other informal disposition. It is my opinion that as a part of a settlement of an administrative matter, the parties have more latitude in effecting an appropriate settlement and may agree, inter alia, to include in an informal disposition or settlement a provision that a notary or contractor would pay the reasonable costs, or some part thereof, of the administrative agency in investigating and bringing an action, as part of a reasonable settlement agreement, in order to avoid litigation with its attendant further costs and expense to both parties.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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