

**LETTER OPINION  
2019-L-09**

October 23, 2019

The Honorable Jim Grueneich  
State Representative, District 12  
3051 83 1/2 Ave SE  
Jamestown, ND 58401

Dear Representative Grueneich:

Thank you for your letter asking for clarification as to eligibility for the skilled workforce student loan repayment program. You ask whether the program would apply to four-year degree programs for high-demand occupations. It is my opinion that four-year degree programs for high-demand occupations designated by the Workforce Development Council (WDC) and the State Board of Higher Education (SBHE) are eligible for the loan repayment program.

**BACKGROUND**

During the 2019 session, the Legislative Assembly enacted House Bill No. 1171, which created two programs designed to support the skilled workforce needs of North Dakota: a student loan repayment program N.D.C.C. § 15-10-38.1 and a scholarship program under N.D.C.C. § 15-10-38.2.<sup>1</sup> The programs share a similar, but not identical, structure. Both instruct the North Dakota State Board of Higher Education (SBHE) to adopt policies and procedures to “develop, implement, promote, and administer” the programs, in cooperation with the Bank of North Dakota (BND) and the North Dakota Workforce Development Council (WDC).<sup>2</sup> To enable the SBHE to create the programs, both sections instruct WDC to work with Job Service North Dakota to determine the high-demand professional and technical skills and emerging occupations in the state.<sup>3</sup> The SBHE is then instructed to work with WDC to create a list of qualifying educational programs, which must pertain to the list of skills and occupations created by WDC and Job Service North Dakota.<sup>4</sup>

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<sup>1</sup> N.D.C.C. §§ 15-10-38.1, 15-10-38.2. House Bill 1171 appropriated \$3 million for each program, to be paid from the earnings and undivided profits of the Bank of North Dakota. See H.B. 1171, 2019 N.D. Leg., §§ 3-4.

<sup>2</sup> N.D.C.C. §§ 15-10-38.1(2), 15-10-38.2(2).

<sup>3</sup> N.D.C.C. §§ 15-10-38.1(3), 15-10-38.2(3).

<sup>4</sup> N.D.C.C. §§ 15-10-38.1(4), 15-10-38.2(4).

Graduates may apply for the student loan repayment program, provided they: 1) successfully complete a qualifying educational program from an eligible institution of higher education; 2) have a student loan with the Bank of North Dakota or other participating lender; 3) reside and work in North Dakota in an eligible occupation; and 4) meet and continue to meet any requirements established by rule.<sup>5</sup>

By contrast, the skilled workforce scholarship program requires that applicants must: 1) be enrolled in an eligible qualified educational program; 2) maintain a 2.5 cumulative grade point average (or maintain progress in the program according to program requirements); and 3) agree to reside and work in the state of North Dakota in an eligible high-demand or emerging occupation for three years.<sup>6</sup>

To qualify as a program eligible for the scholarship program of N.D.C.C. § 15-10-38.2(4), it must “be able to be completed within four semesters or six quarters and must pertain to the professional and technical skills and emerging occupations in high demand,” as determined by the WDC and Job Service ND.<sup>7</sup> There is no equivalent semester or quarter limitation requirement set forth in the loan repayment program of section 15-10-38.1(4).<sup>8</sup>

#### ANALYSIS

You ask whether the loan repayment program created by N.D.C.C. § 15-10-38.1 is available to graduates from four-year institutions. It is my opinion that the program is available to graduates of four-year institutions, provided that all other eligibility requirements of N.D.C.C. § 15-10-38.1 are met.

The primary goal when interpreting a statute is to determine the legislative intent by first looking at the words of the statute.<sup>9</sup> It is only appropriate to look beyond the words of the statute where the language is ambiguous.<sup>10</sup> When interpreting a statute, the words are to be understood according to their ordinary meaning,<sup>11</sup> based on their context.<sup>12</sup>

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<sup>5</sup> N.D.C.C. § 15-10-38.1(5).

<sup>6</sup> N.D.C.C. § 15-10-38.2(6), (7).

<sup>7</sup> N.D.C.C. § 15-10-38.2(4).

<sup>8</sup> N.D.C.C. § 15-10-38.1(4).

<sup>9</sup> *Nesdahl Survey'g & Eng'g v. Ackerland Corp.*, 507 N.W.2d 686, 688 (N.D. 1993) (citing, *inter alia*, *Kim-Go v. J.P. Furlong Enters., Inc.*, 460 N.W.2d 694, 696 (N.D. 1990)).

<sup>10</sup> *Nesdahl*, 507 N.W.2d at 688-89. N.D.C.C. § 1-02-39. See also N.D.C.C. § 1-02-05 (“When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”).

<sup>11</sup> *Kim-Go*, 460 N.W.2d at 696 (citing N.D.C.C. §§ 01-02-02, 01-02-03).

<sup>12</sup> N.D.C.C. § 1-02-03.

“Generally, the law is what the Legislature says, not what is unsaid.”<sup>13</sup> “It must be presumed that the legislature intended all that it said, and that it said all that it intended to say . . . that it made no mistake in expressing its purpose and intent.”<sup>14</sup> It is therefore inappropriate to “indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it.”<sup>15</sup>

The Legislature set out a detailed set of qualifications for eligibility for the skilled workforce loan repayment program. A limitation to programs which may be completed within four semesters or six quarters is not a statutory qualification under N.D.C.C. § 15-10-38.1(4). Based on the plain language and meaning of the statute, it is my opinion that the skilled workforce loan repayment program is available to graduates of qualifying educational programs which exceed four semesters or six quarters, including from four-year institutions.

This conclusion is supported when looking at the requirements set forth in the scholarship program. The Legislature in H.B. 1171, imposed a four-semester or six-quarter cap on programs to qualify for the scholarship program, but did not do so in the loan repayment program.<sup>16</sup> As a matter of interpretation, the Legislature is presumed to act intentionally when it chooses to use a term in one part of a bill, but not another.<sup>17</sup> As a result, the Legislature’s use of the four-semester or six-quarter cap in the scholarship program section, and its omission from the loan repayment section of the same bill, must be interpreted as intentional.

The remaining question is what is considered an “eligible institution[s] of higher education” under the student loan repayment program.<sup>18</sup> The phrase is not defined in the statute.<sup>19</sup> If the intent of the statute was to make only two-year institutions of higher education “eligible,” as the scholarship program did by limiting the program length to four semesters or six quarters,<sup>20</sup> then graduates from four-year qualifying educational programs would not be eligible for the loan repayment program. Under the loan repayment program, only graduates from institutions of higher education in North Dakota are eligible for the loan repayment program.<sup>21</sup> In the absence of an explicit statutory definition of an “eligible

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<sup>13</sup> *Little v. Tracy*, 497 N.W.2d 700, 705 (N.D. 1993).

<sup>14</sup> *Little*, 497 N.W.2d at 705 (citing *City of Dickinson v. Thress*, 290 N.W. 653, 657 (1940)).

<sup>15</sup> *Dickinson*, 290 N.W. at 657.

<sup>16</sup> Compare N.D.C.C. § 15-10-38.1(5) with N.D.C.C. § 15-10-38.2(5), (6).

<sup>17</sup> *Sanderson v. Walsh Cnty*, 712 N.W.2d 842, 848 (N.D. 2006) (“[T]he law is what is said, not what is unsaid, and the mention of one thing implies the exclusion of another.”) (citing *Zueger v. N.D. Workers Comp Bureau*, 584 N.W.2d 530 (N.D. 1998)).

<sup>18</sup> N.D.C.C. § 15-10-38.1(5)(a).

<sup>19</sup> *Id.*

<sup>20</sup> N.D.C.C. § 15-10-38.2(4).

<sup>21</sup> N.D.C.C. § 15-10-38.1(5).

institution of higher education,” the meaning of the term is to be taken from the context in which the phrase is used.<sup>22</sup> As a result, it is my opinion that the phrase “eligible institution of higher education” refers to the requirement that only graduates from North Dakota institutions of higher education are eligible for the skilled workforce loan repayment program, and does not imply any additional limitations as to the length of a program offered by such an institution.

Based on the foregoing, it is my opinion that the skilled workforce loan repayment program would apply to four-year degree programs for high-demand occupations.<sup>23</sup>

Sincerely,

Wayne Stenehjem  
Attorney General

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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.<sup>24</sup>

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<sup>22</sup> *Sanderson*, 712 N.W.2d at 848.

<sup>23</sup> Since enrollment of H.B. 1171, the SBHE and the North Dakota University System (NDUS) implemented several policies and procedures regarding the programs and what are considered “qualifying educational programs.” See SBHE Policy 508.3 (effective June 27, 2019); NDUS Procedure 508.3 (effective Aug, 14, 2019); see also NDUS public facing fact sheets and frequently asked question documents ([www.ndus.edu/career-builders](http://www.ndus.edu/career-builders)). To the degree the policies and procedures exceed the statutory authority or contradict the statute, such policies and procedures are void. N.D.C.C. § 28-32-18(1)(a), (d); N.D.A.G. 2010-L-12, at 5-6 (citing *Moore v. N.D. Workmens Comp. Bureau*, 374 N.W.2d 71 (N.D. 1985); *Smith v. N. D. Workers Comp. Bureau*, 447 N.W.2d 250 (N.D. 1989); *Hecker v. Stark Cty. Social Servs. Bd.*, 527 N.W.2d 226 (N.D. 1994)).

<sup>24</sup> See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).