

**LETTER OPINION  
2003-L-12**

February 25, 2003

Ms. Janet Placek Welk  
Executive Director  
Education Standards and Practices Board  
600 East Boulevard Avenue, Dept. 202  
Bismarck, ND 58505-0080

Dear Ms. Welk:

Thank you for your letter asking whether an individual is eligible for stipend funding under House Bill 1344 passed by the 57th Legislative Assembly. See 2001 N.D. Sess. Laws ch. 173, § 16. You point out that House Bill 1344 provides for an annual stipend for up to four years once national teacher certification has been obtained. In this instance, the applicant actually began the certification process prior to the effective date of House Bill 1344. In a subsequent telephone conversation with a member of my staff, you indicated that the individual actually made application sometime during 2000, well before the July 1, 2001, trigger date for grant applications contained in House Bill 1344.

Under section 16 of House Bill 1344, the Legislature appropriated money “for the purpose of making grants to assist teachers in obtaining national certification.” A licensed or approved individual “may file an application with the board for a grant to assist with the cost of obtaining national teacher certification after July 1, 2001.” *Id.* (emphasis added). The Education Standards and Practices Board then reviews the applications, and successful applicants are eligible to receive an initial grant to assist with assessment costs and, following national teacher certification, an additional annual \$1,500 stipend for up to four years.

Your question arises because the individual applied for the initial grant and began the certification process prior to the effective date of House Bill 1344 and the application trigger date of July 1, 2001, specified in section 16 of House Bill 1344. This application was apparently made under 1999 N.D. Sess. Laws ch. 35, § 4, and the applicant received the assessment costs grant under that provision of law.

“All statutes are to be applied prospectively unless retroactivity is expressly declared. N.D.C.C. § 1-02-10. However, a statute is not retroactive because it draws upon

antecedent facts for its operation or because part of the requisites of its action are drawn from time antecedent to its passing. Public School District No. 35 v. Cass County Board of Commissioners, 123 N.W.2d 37, 40 (N.D. 1963).” N.D.A.G. Letter to Meyer (July 25, 1991). “[T]he legislature is free to apply statutes retroactively unless doing so would result in ex post facto application. Statutes generally are not retroactive unless expressly declared so by the legislature.” State v. Shafer-Imhoff, 632 N.W.2d 825, 836 (N.D. 2001).

There is no indication that section 16 of House Bill 1344 was intended by the Legislature to apply retroactively. Moreover, section 16 of House Bill 1344 plainly states that a grant application may be filed “after July 1, 2001.” The limiting language “after July 1, 2001” is in subsection 2 of section 16 of House Bill 1344, which relates to the grant for assistance with the assessment costs of national teacher certification. In other words, it involves the time leading up to the award of the certificate. Thereafter, subsection 5 of section 16 of House Bill 1344 covers the periodic stipend payable for full school years of teaching after the national teacher certificate is obtained. The language of subsection 5 refers to after “the” individual obtains the certificate, which is an apparent reference to the same individual that made the initial application for assessment costs under subsection 2.

The appropriation under House Bill 1344 expires June 30, 2003. Therefore, for an individual to have qualified for the assessment cost grant and the first year of the stipend, the person must have applied for the first grant after June 30, 2001, and have been awarded the certificate before July 1, 2002, in order for there to have been one full school year after receiving the certificate. See N.D.C.C. § 15.1-06-03.

The applicant your letter refers to began the certification process under the law in effect prior to House Bill 1344, but did not obtain the national teacher certificate until November of 2002. Under these facts, it is my opinion that the individual could not qualify for stipend funds under House Bill 1344 both because the person did not commence the certificate process under House Bill 1344, and because there was not a full school year of teaching available after being awarded the national teacher certificate before the appropriation in House Bill 1344 expires.

Sincerely,

Wayne Stenehjem  
Attorney General