

LETTER OPINION
2003-L-33

August 4, 2003

Dean C. Hildebrand, Director
North Dakota Game and Fish Department
100 North Bismarck Expressway
Bismarck, ND 58501-5095

Dear Mr. Hildebrand:

Thank you for your July 31, 2003, letter asking for my interpretation of Section 2 of House Bill 1223. Section 2 of H.B. 1223, 2003 N.D. Sess. Laws ch. 203, creates a new section to ch. 20.1-08, which has been codified at N.D.C.C. § 20.1-08-04.9 (2003). Pursuant to N.D. Const. Art. IV, § 13, H.B. 1223 took effect on August 1, 2003. N.D.C.C. § 20.1-08-04.9 provides:

Small Game Proclamation - Pheasants. The governor, in the governor's proclamation, shall prohibit a nonresident from hunting for the first seven days of the pheasant season on land owned or private land enrolled by the [Game and Fish] department for the purposes of hunting or on land for which the department pays in lieu of tax payments.

You indicate that this section of the law has been given three different interpretations:

1. Nonresidents are prohibited from hunting or pursuing any game on department lands for the first seven days of the pheasant season.
2. Nonresidents are prohibited from hunting pheasants on department lands for the first seven days of the pheasant season, but may pursue any other game for which a lawful season is provided.
3. Nonresidents are prohibited from hunting upland game birds (pheasants, grouse, partridge) on department lands for the first seven days of the pheasant season, but may pursue any other game for which a lawful season is provided such as waterfowl, deer – bow, or antelope.

The primary goal in construing the meaning of a statute is to discover the intent of the Legislature. Northern X-Ray Company, Inc. v. Hanson, 542 N.W.2d 733, 735 (N.D. 1996). In seeking to determine legislative intent, courts will look first to the language of

the statute. “If a statute’s language is clear and unambiguous, the legislative intent is presumed clear on the face of the statute.” Id.

North Dakota Century Code § 20.1-08-04.9 clearly requires the Governor, by proclamation,¹ to prohibit nonresidents from hunting activities on department lands for the first seven days of the pheasant season. The issue is whether the Legislature intended the Governor to prohibit all nonresident hunting, or just nonresident pheasant or upland game² hunting during that seven-day period. This issue would have been readily resolved had the Legislature inserted the word “pheasants” after the word “hunting.” It did not. Rather, the Legislature instructed the governor to prohibit nonresidents from “hunting”.

In ascertaining legislative intent, courts look first at the words used in the statute, and give those words their plain, ordinary, and commonly understood meaning unless they are defined otherwise by statute. N.D.C.C. § 1-02-02; Jorgenson v. Agway, Inc., 627 N.W.2d 391, 393 (N.D. 2001); Kim-Go v. J.P. Furlong Enters., Inc., 460 N.W.2d 694, 696 (N.D.1990). The word “hunting”, as used in N.D.C.C. § 20.1-08-04.9 is defined as

[S]hooting, shooting at, pursuing, taking, attempting to take, or killing any game animals and game birds; searching for or attempting to locate or flush any game animals and game birds; luring, calling, or attempting to attract game animals and game birds; hiding for the purpose of taking or attempting to take game animals and game birds; and walking, crawling, or advancing toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds. The term does not include possessing or using photographic equipment.

N.D.C.C. § 20.1-01-02(20) (2003).

The definition of “hunting” in no way narrows the scope of the nonresident prohibition since it includes reference to “any game animals and game birds”. Id.

“[W]hen a statute is clear and unambiguous it is improper for courts to attempt to go behind the express terms of the provisions so as to legislate that which the words of the statute do not themselves provide.” Public Service Com’n. v. Wimbledon Grain Co., 663 N.W.2d 186, 195 (N.D. 2003) (quoting Schaefer v. ND Workers Comp. Bureau, 462 N.W.2d 179, 182 (N.D. 1990)).

¹ The Governor’s proclamation has the force of law. N.D.C.C. § 20.1-08-01.

² Title 20.1, N.D.C.C., assigns no meaning to “upland game”. N.D.C.C. § 20.1-01-02 defines “small game”, “game birds” and “waterfowl”, the latter two being a subset of the former. N.D.C.C. § 20.1-01-02 (40), (15) and (45) (2003).

In Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993), the supreme court said:

Generally, the law is what the Legislature says, not what is unsaid . . .

It must be presumed that the legislature intended all that it said, and that it said all that it intended to say. The legislature must be presumed to have meant what it has plainly expressed. It must be presumed, also, that it made no mistake in expressing its purpose and intent. Where the language of a statute is plain and unambiguous, the “court cannot indulge in speculation as to the probable or possible qualifications which might have been in mind of the legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it.”

Id. quoting in part City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940).

Usually, when the plain meaning of a statute is apparent, it is improper and unnecessary to delve further. I am aware that the title, or preamble, to section 2 of H.B. 1223 describes the bill as an act to create and enact “a new section to ch. 20.1-08 of the North Dakota Century Code relating to . . . the hunting of pheasants on certain lands in the state.” 2003 Sess. Laws ch. 203, § 2. This language suggests that the Legislature intended the Governor to prohibit nonresidents from hunting only pheasants during the first seven days of pheasant season. Only if a statute is ambiguous, however, is it permissible to consider the preamble. Willis v. Schroeder Aviation, Inc., 390 N.W. 2d 544, 546 (N.D. 1986); N.D.C.C. § 1-02-39. Construing N.D.C.C. § 20.1-08-04.9 in any manner other than the first interpretation ignores the plain meaning of the statute. Therefore, it is my opinion that N.D.C.C. § 20.1-08-04.9 requires the Governor, in his proclamation, to prohibit nonresidents from all hunting on land owned or private land enrolled by the department for purposes of hunting or on land for which the department pays in lieu of tax payments. The period during which nonresidents are prohibited from hunting on these department lands is the first seven days of the pheasant season.

Sincerely,

Wayne Stenehjem
Attorney General