

**LETTER OPINION  
2003-L-60**

December 10, 2003

The Honorable Rich Wardner  
State Senate  
1042 12th Ave W  
Dickinson, ND 58601-3654

Dear Senator Wardner:

Thank you for requesting my opinion on whether a retiree who accepts a lump sum distribution from a political subdivision's retirement plan is eligible to participate in the state's uniform group insurance program pursuant to N.D.C.C. § 54-52.1-03.1.

The Legislative Assembly amended N.D.C.C. § 54-52.1-03.1 in 2003 and added the following pertinent language: "A retiree who has accepted a retirement allowance from a participating political subdivision's retirement plan may elect to participate in the uniform group under [chapter 54-52.1] . . . ." 2003 N.D. Sess. Laws ch. 500, § 1. The North Dakota Public Employees Retirement System (NDPERS), which administers N.D.C.C. chapter 54-52.1, has interpreted the phrase "retirement allowance" to mean a periodic payment to a retiree from a retirement plan. Based on that interpretation, NDPERS has advised the city of Dickinson that retirees who have accepted lump sum distributions of their retirement accounts are not eligible to participate in the uniform group insurance program because a lump sum distribution is not a "retirement allowance." You question whether that conclusion is accurate.

I note that neither "allowance" nor "retirement allowance" are defined in the North Dakota Century Code. When interpreting the meaning of a statute, the words in the statute are to be given their ordinary meaning if there is no statutory definition. N.D.C.C. § 1-02-02. "Allowance" is defined as "[s]omething given, as money, at regular intervals or for a specific purpose . . . ." The American Heritage Dictionary 96 (2d coll. ed. 1991).

Since the definition of "allowance" could mean either a periodic distribution or a one-time, lump sum payment for a specific purpose, the statute is ambiguous and the ordinary meaning is of no help. In construing an ambiguous statute, several useful aids may be used. Included in those aids are the legislative history and the administrative construction of the statute. N.D.C.C. § 1-02-39.

The legislative history indicates that the new language was added to give a political subdivision "retiree the same opportunity to join the [uniform group insurance] plan that a state employee has." Hearing on S.B. 2176 Before the Senate Gov't and Veterans Affairs

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Comm., 2003 N.D. Leg. (Jan. 24) (Statement of Sparb Collins, Executive Director, NDPERS). There are two retirement programs for state employees: the N.D.C.C. ch. 54-52 defined benefit retirement plan and the N.D.C.C. ch. 54-52.6 defined contribution retirement plan. State-employee retirees who participate in the defined contribution retirement program are only eligible to join the uniform group insurance program if they have “accepted a periodic distribution from the defined contribution retirement plan.” N.D.C.C. § 54-52.1-03(3). See also N.D.C.C. § 54-52.6-13(3) (providing distribution methods for defined contribution program retirees, including lump sum and periodic distribution options). Thus, political subdivision employees who retire under a defined contribution retirement program would have to accept a periodic distribution of their retirement monies in order to be eligible to participate in the uniform group insurance program.

State-employee retirees who participate in the defined benefit retirement program, however, are eligible for the uniform group insurance program if they accept “a retirement allowance.” N.D.C.C. §54-52.1-03(3). Since that eligibility is defined with the same problematic phrase we are trying to construe, resort to another interpretive aid is necessary.

The administrative construction of the phrase “retirement allowance” is helpful. As you are aware, NDPERS has interpreted the phrase “retirement allowance” to mean a periodic distribution: state-employee retirees under the defined benefit plan are only eligible to participate in the uniform group insurance program if they accept a periodic distribution, and are not eligible if they take a lump sum distribution. The North Dakota Supreme Court defers “to the interpretation given to a statute by the agency which is responsible for enforcing the statute, especially when such interpretation is consistent with the statutory language.” Holtz v. Workers Comp. Bureau, 479 N.W.2d 469, 470 (N.D. 1992).

The NDPERS’ interpretation of the phrase “retirement allowance” with regard to a defined benefit retirement plan retiree’s eligibility is consistent with both N.D.C.C. § 54-52.1-03(3) and with the defined contribution retirement plan’s eligibility requirements. Accordingly, it is my opinion that a political-subdivision retiree of either a defined contribution or a defined benefit retirement plan must take a periodic distribution of the retiree’s retirement monies in order to be eligible to participate in the uniform group insurance program.

Sincerely,

Wayne Stenehjem  
Attorney General

sam/vkk