

**LETTER OPINION  
2005-L-46**

December 19, 2005

The Honorable Ron Carlisle  
House of Representatives  
7112 Sibley Dr  
Bismarck, ND 58504-3020

Dear Representative Carlisle:

Thank you for your letter asking whether the State Farm, (now known as the Missouri River Correctional Center (Center))<sup>1</sup> may lease land to produce hay for sale and whether N.D.C.C. § 12-48-06 allows a state correctional facility to sell hay produced by inmates to the public. The Center is under the jurisdiction of the Department of Corrections and Rehabilitation (DOCR).

It is my opinion that DOCR may lease land under its jurisdiction to produce hay. It is my further opinion that DOCR may conduct farming and ranching operations and that the sale of products from those operations is not subject to the requirements of N.D.C.C. § 12-48-03.1.

ANALYSIS

The primary objective of statutory interpretation is to ascertain legislative intent.<sup>2</sup> "In interpreting a statute words are to be given their plain, ordinary, and commonly understood meaning."<sup>3</sup> If the statutory language is clear and unambiguous, that language cannot be disregarded under the pretext of pursuing the legislative intent because the intent is presumed to be clear from the face of the statute.<sup>4</sup>

Your first question asks about the authority of the DOCR to lease land to produce hay. The director of DOCR has the authority to manage and control all institutions and programs within the department, including land owned by the state under the jurisdiction of the DOCR.<sup>5</sup> Specifically, the director of the DOCR is authorized "[t]o lease land owned by the state under the jurisdiction of the department of corrections and rehabilitation."<sup>6</sup> In

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<sup>1</sup> See 1991 N.D. Sess. Laws ch. 116, § 4 (changing the name of the State Farm to the Missouri River Correctional Center.)

<sup>2</sup> Zueger v. Workers Compensation Bur., 584 N.W.2d 530, 533 (N.D. 1988).

<sup>3</sup> Coldwell Banker-First Realty, Inc. v. Meide & Son, Inc., 422 N.W.2d 375,379 (N.D. 1988).

<sup>4</sup> District One Republican Committee v. District One Democrat Committee, 466 N.W.2d 820, 824-25 (N.D. 1991).

<sup>5</sup> N.D.C.C. § 54-23.3-04(1) and (12).

<sup>6</sup> N.D.C.C. § 54-23.3-04(12).

addition, a lease by the director of the DOCR is not subject to the requirements for the sale or exchange of land.<sup>7</sup> The language of N.D.C.C. § 54-23.3-04(12) is clear and unambiguous. Accordingly, it is my opinion that the DOCR may lease land under its jurisdiction for agricultural uses.

Your second question asks whether the restrictions contained in N.D.C.C. § 12-48-03.1 apply to farming operations and whether N.D.C.C. § 12-48-06 allows the sale of hay produced by inmate labor in competition with other farmers producing hay. The DOCR is authorized to establish and engage in prison industries<sup>8</sup> and N.D.C.C. § 12-48-03.1 establishes requirements for the sale of prison industries' products. Specifically that section provides in part:

Except as provided in subsection 1, 2 and 3, the director may authorize the sale of selected prison industry products to wholesale and retail outlets. All other prison industry products must be limited for sale to nonprofit, charitable, and tax-supported organizations, institutions, and agencies and to municipal, county, state, or other governmental subdivisions and agencies.<sup>9</sup>

Section 12-48-06, N.D.C.C., was enacted in 1897.<sup>10</sup> In 1977, the Legislative Assembly substantially amended N.D.C.C. § 12-48-06 and the pertinent part read as follows:

Inmate labor may be used by the state in carrying on farming operations, or in any industry established at the penitentiary, and the state may dispose of the products of such enterprises.<sup>11</sup>

In 1983, the Legislative Assembly again amended N.D.C.C. § 12-48-06. The pertinent part read as follows:

Inmate labor may be used by the state in carrying on farming and ranching operations, or in any industry established at the penitentiary, and the state may dispose of the products of ~~such~~ the farming and ranching enterprises. The industry products may be disposed as provided in section 12-48-03.1.<sup>12</sup>

Section 12-48-06, N.D.C.C., was last amended in 1983. This section distinguishes farming and ranching operations from any other industry established by the Penitentiary. Section 12-48-06, N.D.C.C., makes the disposal of prison industry products subject to N.D.C.C. § 12-48-03.1; however, it does not include the same requirement on the disposal of products from farming and ranching operations.

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<sup>7</sup> Id.

<sup>8</sup> N.D.C.C. § 12-48-03.1.

<sup>9</sup> Id.

<sup>10</sup> 1897 N.D. Laws, ch. 108, § 1.

<sup>11</sup> 1977 N.D. Laws, ch. 114, § 2.

<sup>12</sup> 1983 N.D. Laws, ch. 161, § 1 (emphasis added).

Generally, resort to the legislative history is not permissible when the statute is clear and unambiguous. In my opinion, the language in N.D.C.C. § 12-48-06 is clear and unambiguous. Even if it was determined to be ambiguous, thus allowing extrinsic aids to be used, a review of the legislative history supports the interpretation that the sale of farm and ranch products are not subject to the restrictions in N.D.C.C. § 12-48-03.1. In explaining the bill, the attorney for the Director of Institutions said the amendments clarify that “[a]ll ranching and farming products not used and consumed by the penitentiary are sold on the open market.”<sup>13</sup> He further stated “[i]ndustry products have been changed. This defines to whom the penitentiary can sell their products. They can be sold only to charitable and nonprofit governmental organizations.”<sup>14</sup> In response to a question by Rep. Kuehn as to whether the sale of agriculture products was “in competition with private industry” Al Lick with the Department of Institutions responded “[y]es, [t]hey are indeed competing with the private sector.”<sup>15</sup>

Therefore, it is my opinion that the DOCR is authorized to carry on farming and ranching operations and to sell its agricultural and ranching products to the public.<sup>16</sup> The sale of products from farming and ranching operations is not subject to the requirements of N.D.C.C. § 12-48-03.1.

Sincerely,

Wayne Stenehjem  
Attorney General

mjm/ks/vkk

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>17</sup>

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<sup>13</sup> Hearing on H.B. 1239 Before the Senate State and Federal Government Comm., 1983 N.D. Leg. (Feb. 14) (Statement of Ed Zuern).

<sup>14</sup> Id.

<sup>15</sup> Hearing on H.B. 1239 Before the House State and Federal Government Comm., 1983 N.D. Leg. (Jan. 19).

<sup>16</sup> N.D.C.C. § 12-48-06.

<sup>17</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).