

LETTER OPINION

2008-L-11

July 11, 2008

Mr. Norris O. Braaten
Chairman, Governing Board
North Dakota Veterans Home
PO Box 673
Lisbon, ND 58054-0673

Dear Mr. Braaten:

Thank you for your letter asking whether the North Dakota Veterans Home is obligated to reimburse an employee for college tuition costs for the 2008 spring and summer semesters. For the reasons outlined below, it is my opinion that the Veterans Home is not obligated to pay for an employee's tuition reimbursement in excess of the amount authorized by current agency policy.

ANALYSIS

In your letter, you indicate that an employee of the Veterans Home was hired in 1999 at a time when the Veterans Home did not have sufficient registered nurses. You indicate that this employee was told she should continue her education to become a registered nurse and that the Veterans Home would pay for that education.

You state the employee did pursue further education starting in 2002. The employee subsequently attended classes in 2003 and 2005 through spring 2008. You also indicate that when this employee was hired, no formal policy governing tuition reimbursement was in place. According to Veterans Home records, a formal policy governing tuition reimbursement was adopted in September 2002.¹ The policy at that time provided that the "Veterans Home may pay up to 100 percent of the registration fees for an employee to attend classes at institutions of higher learning and other training institutions." The policy further provided that "[a]pproval for reimbursement shall be dependent on the availability of funds."²

¹ See North Dakota Veterans Home, Administration Policy, Policy No. 35 (Sept. 17, 2002).

² Id.

The policy was significantly amended in 2004 to include, among other things, a provision that limited the total amount of reimbursement available for a staff member to \$8,000. The policy adopted in 2004 also expressly stated that the limitation on total reimbursement applied to both staff members already participating in the program as well as those who subsequently pursued educational opportunities.³ The current Veterans Home policy provides that the total reimbursement available may not exceed \$8,000 or \$9,000 for registered nurses. The current policy also continues to state expressly that the limitation on total reimbursement applies to both staff members already participating in the program as well as those who later pursue educational opportunities.⁴ Based upon the total reimbursement limitation, the administrator for the Veterans Home denied the employee's tuition reimbursement request for classes for the 2008 spring and summer semesters because this employee had already received \$9,400 in educational reimbursement. The employee has now turned to the governing board of the Veterans Home and asked for reimbursement saying that when she was hired, she was orally told the Veterans Home would pay for her to become a registered nurse.

In her April 16, 2008, letter to the governing board, the employee did not provide the exact language communicated to her, but only her understanding that she was hired into a position in which she would be expected to pursue further education and that the Veterans Home would pay for that education. General statements regarding future intentions or expectations are ordinarily too indefinite to be viewed as promissory in nature.⁵ Regardless, no public official has authority to contract to expend monies from future appropriations.⁶ Therefore, there simply could be no enforceable agreement to reimburse this employee's educational pursuits indefinitely into the future. Rather, as the policy first adopted by the Veterans Home outlines, reimbursement was discretionary depending on the public benefit received for the expenditure and contingent on the availability of funds.

All public expenditures must be for a public purpose.⁷ Expenditures that chiefly benefit a private individual and only incidentally or ostensibly benefit the public welfare are prohibited.⁸ Agency policies involving public expenditures must reflect this and ensure that the public purpose is truly being furthered by the expenditure. Because the needs

³ North Dakota Veterans Home, Facility/Administrative Policy, Policy No. 35 (Apr. 1, 2004).

⁴ North Dakota Veterans Home, Facility/Administrative Policy, Policy No. 29 (Oct. 12, 2006).

⁵ See, e.g., Lagerquist v. Stergo, No. 20070285, 2008 WL 2597048 (N.D. 2008) (to be valid and enforceable contract terms must be reasonably definite and certain).

⁶ See N.D.A.G. 2004-L-78.

⁷ See N.D. Const. art. X, § 18; State v. Blunt, No. 20070247, 2008 WL 2572582 (N.D. 2008).

⁸ See N.D.A.G. 2003-L-51.

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and circumstances of an agency may change over time, policies covering otherwise authorized expenditures must also necessarily change to ensure that expenditures remain predominantly to the public's benefit.

Current Veterans Home policy limits the total amount of assistance available to \$9,000 for registered nurses, presumably to ensure that educational assistance provided to Veterans Home employees falls within the limits of available funding. This limitation has been in place for a number of years and expressly applies to all Veterans Home employees. It is also my understanding that this employee was expressly advised by the current Veterans Home administrator that she was subject to the policy. Employees who continue employment upon notification of unilateral changes to employer policy become subject to the new policy.⁹

In addition, you indicate the Veterans Home currently does not have funds to pay for tuition reimbursement. According to Veterans Home administration, monies for education including tuition reimbursement are budgeted for and paid from the operating line item of the Veterans Home appropriation. According to Veterans Home administration, the operating line item will be exceeded absent Emergency Commission action. State officers and agencies may not expend public funds except pursuant to an appropriation and may not use an amount appropriated for one purpose for any other purpose without prior approval of the Emergency Commission.¹⁰

Based upon the foregoing, it is my opinion that the Veterans Home is not obligated to reimburse the employee for education expenses beyond the maximum amount allowed under current agency policy.

Sincerely,

Wayne Stenehjem
Attorney General

tca/pg

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.¹¹

⁹ See Sadler v. Basin Elec. Power Co-op., 431 N.W.2d 296 (N.D. 1988).

¹⁰ See N.D. Const. art. X, § 12; N.D.C.C. §§ 54-16-03, 54-16-05, 54-44.1-09, 54-44.1-10.

¹¹ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).