

**LETTER OPINION**  
**2014-L-15**

November 3, 2014

The Honorable Marvin E. Nelson  
State Representative  
PO Box 577  
Rolla, ND 58367-0577

Dear Representative Nelson:

Thank you for your letter raising questions about the proper construction of Section 4 of House Bill 1016 passed in the 2013 legislative session, regarding a \$1.5 million appropriation to the Housing Finance Agency to provide grants for flood-impacted housing assistance. You indicate that, based on some statements reflected in the legislative history, it has been questioned whether the funds appropriated under Section 4 are to be utilized solely for the FEMA trailer project<sup>1</sup> located in Minot despite the broader language contained in Section 4 making the grant funds also available to other political subdivisions and nonprofit entities. Based on the following, including the application of standard rules of statutory construction, it is my opinion that Section 4 of H.B. 1016, 2013 N.D. Leg., should be read in its entirety and by its plain meaning is not limited to any one particular flood impact project. It is my further opinion that N.D.C.C. § 37-17.1-27 by its plain terms does not require approval of the Emergency Commission and the Budget Section in order to distribute grants under Section 4 of H.B. 1016, 2013 N.D. Leg., although Section 4 does

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<sup>1</sup> The North Dakota Housing Finance Agency described the Minot Housing Authority FEMA trailer project as follows: “The Minot Housing Authority . . . initially requested [the funds] to facilitate taking over the Virgil Workman temporary housing group site from the Federal Emergency Management Agency. This funding was expected to cover operational expenses, relocation of residents into permanent housing and disposal costs of the temporary units. Due to a more rapid transition than anticipated, the Housing Authority later amended their request to \$20,000 to be used for security deposits for approximately 11 income-eligible households that were transitioning from FEMA temporary housing units to permanent rental housing as FEMA’s housing mission came to an end on Sept. 24 [2013].” (Memo from Jolene Kline, Acting Exec. Dir., N.D. Housing Finance Agency, to Budget Section (Dec. 11, 2013)).

mandate that the Housing Finance Agency provide a report to the Budget Section regarding the use of the appropriated funds.

#### ANALYSIS

Section 4 of H.B. 1016, 2013 N.D. Leg., provides as follows:

**SECTION 4. APPROPRIATION - HOUSING FINANCE AGENCY - FLOOD-IMPACTED HOUSING ASSISTANCE - BUDGET SECTION REPORT.** There is appropriated out of any moneys in the state disaster relief fund in the state treasury, not otherwise appropriated, the sum of \$1,500,000, or so much of the sum as may be necessary, to the housing finance agency for the purpose of providing grants for flood-impacted housing assistance, for the period beginning with the effective date of this Act and ending June 30, 2015. The funds appropriated under this section must be used to provide grants to counties, cities, local housing authorities, and other nonprofit entities to assist homeowners and residents in the rehabilitation or replacement of flood-damaged homes, to retain homeowners and other residents in the community, and for transitional expenses to facilitate housing availability for flood-impacted residents. An entity requesting a grant for temporary housing for flood-impacted residents must certify to the housing finance agency that housing occupants are eligible to receive housing assistance under federal housing and urban development agency guidelines, that a land use agreement is in place for temporary housing units, and that a plan has been developed for the disposal of temporary housing units. The housing finance agency shall develop guidelines for the distribution of funds including the frequency of the distribution of grant funds. During the 2013-14 interim the housing finance agency shall provide a report to the budget section regarding the use of funds under this section.<sup>2</sup>

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<sup>2</sup> 2013 N.D. Sess. Laws ch. 16, § 4 (emphasis added).

In your letter you indicate that there were statements in the legislative history indicating that the appropriation contained in Section 4 of H.B. 1016 was intended to be used solely for the FEMA trailer project in Minot.<sup>3</sup>

However, a plain reading of this provision does not reveal that the use of this appropriation was limited to any one particular flood-impacted housing assistance project or any one particular grantee.<sup>4</sup>

Both the North Dakota Supreme Court and this office on a number of occasions have said that “[t]he Legislature’s intent must be sought initially from the statutory language.”<sup>5</sup> “If a statute’s language is clear and unambiguous, the legislative intent is presumed clear on the face of the statute.”<sup>6</sup> Usually, when the plain meaning of a statute is apparent, it is unwise and unnecessary to delve further.<sup>7</sup>

As is evident, there is no language in the final version of Section 4 of H.B. 1016, 2013 N.D. Leg., limiting the grant funds to the Minot FEMA trailer project. When considering the weight to give statements of legislators in hearings in determining the overall legislative

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<sup>3</sup> For example, there was the following exchange concerning this appropriation before the Senate Appropriations Committee:

**Senator Holmberg:** There is some chatter about making additional adjustments regarding FEMA trailers. There was concern about \$1.5M and whether it should be \$3M.

**Major General Sprynczynatyk:** There is \$1.5M left in the fund for rehabilitation and retention of residents in flood stricken areas. The need has been estimated at \$3M. We are in the process of looking at simple language that would allow funding through the rehabilitation and retention program to be used for completion of work thru (sic) United Way to provide supplies to rebuild homes and also to provide a way to keep FEMA trailers in place. That would be an increase of \$1.5M over what we have now.

Hearing on H.B. 1016 Before the Senate Comm. on Appropriations, 2013 N.D. Leg. (Mar. 27). See also Hearing on H.B. 1016 Before the House Comm. on Appropriations, Gov’t Operations Div., 2013 N.D. Leg. (Apr. 30) (Statements of Representatives Brandenburg, Louser, Grindberg, and David Sprynczynatyk).

<sup>4</sup> Had Section 4 been written to only apply to one particular project, a question may have been raised as to whether the provision constituted a local or special law in violation of the Constitution. See N.D. Const. art. IV, § 13.

<sup>5</sup> E.g., Cnty. of Stutsman v. State Historical Soc’y, 371 N.W.2d 321 (N.D. 1985).

<sup>6</sup> N. X-Ray Co., Inc. v. Hanson, 542 N.W.2d 733, 735 (N.D. 1996).

<sup>7</sup> Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993).

intent, isolated comments by a legislator or interested party in the record must be viewed cautiously and might not be sufficient proof of legislative intent.<sup>8</sup> The plain language of a statute is paramount and controls over broad statements of legislative intent.

In this case, the Legislature passed the grant language as it appears in Section 4 of H.B. 1016. Notwithstanding statements appearing in the legislative history, this provision is not ambiguous and does not by its terms limit any flood impact housing grants just to the Minot Housing Authority, but rather makes the flood impact grants available to other flood-impacted political subdivisions and nonprofit entities. When the wording of a law is clear and unambiguous, the letter is not to be disregarded under the pretext of pursuing its spirit,<sup>9</sup> and in such an instance “it is improper for courts to attempt to go behind the express terms of the provision so as to legislate that which the words of the statute do not themselves provide.”<sup>10</sup>

In this instance, the appropriation was worded in a way that permitted providing grants to multiple projects by multiple political subdivisions or nonprofit entities for a number of purposes. That language cannot just be disregarded.<sup>11</sup> The North Dakota Housing Finance Agency issued a request for proposals, disseminated it on the agency’s website, and made a grant to the only entity that applied for one, i.e., the Minot Housing Authority. This was all done in conformity with the express and unambiguous language of Section 4 of H.B. 1016, 2013 N.D. Leg.; the intent of the Legislative Assembly is presumed to be apparent from the plain language of this provision. It is my opinion that Section 4 of H.B. 1016 should be read in its entirety and is not limited by its plain meaning to any one particular flood impact project.

Because the appropriation in Section 4 of H.B. 1016, 2013 N.D. Leg., is made as part of the state disaster relief fund, you also asked whether N.D.C.C. § 37-17.1-27 is applicable here. That statute mandates that any required state share of the funding or expenses associated with presidential-declared disasters or reimbursing costs under N.D.C.C. § 37-17.1-28 dealing with wide area search and rescue activities must be approved by the Emergency Commission and the Budget Section. Since the funds appropriated in Section 4 of H.B. 1016 were not for these purposes, it is my opinion that the requirements of N.D.C.C. § 37-17.1-27 concerning Emergency Commission and Budget Section approval

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<sup>8</sup> N.D.A.G. 2014-L-05, citing N.D.A.G. 87-19 (in determining legislative intent one may only cautiously rely on comments of a legislator or interested party) (citing Snyder’s Drug Stores Inc. v. N.D. State Bd. of Pharmacy, 219 N.W.2d 140, 147 (N.D. 1974)).

<sup>9</sup> N.D.C.C. § 1-02-05.

<sup>10</sup> Schaefer v. N.D. Workers Comp. Bureau, 462 N.W.2d 179, 182 (N.D. 1990).

<sup>11</sup> See State ex rel. Kusler v. Sinner, 491 N.W.2d 382, 385 (N.D. 1992) (“A statute must be construed as a whole to determine the legislative intent, and if possible, the entire statute must be given meaning because the law neither does nor requires idle acts.”) (citing Cnty. of Stutsman v. State Historical Soc’y, 371 N.W.2d 321 (N.D. 1985)).

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do not apply here. Section 4 does, however, require that during the 2013-14 interim, the Housing Finance Agency shall provide a report to the Budget Section regarding the use of funds under this section. The Housing Finance Agency did make the report required under this provision on December 11, 2013.<sup>12</sup>

Sincerely,

Wayne Stenehjem  
Attorney General

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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>13</sup>

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<sup>12</sup> See Flood-Impacted Housing Assistance Program Update by Jolene Kline, Acting Exec. Dir., North Dakota Housing Finance Agency (Dec. 11, 2013).

<sup>13</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).