

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 96-F-04

Date issued: March 1, 1996

Requested by: Sparb Collins, Public Employees Retirement System

- QUESTION PRESENTED -

Whether the premiums collected by the relevant provider relating to the dental, vision, and long-term care plans established under N.D.C.C. ch. 54-52.1 are exempt from the state premium tax imposed under N.D.C.C. § 26.1-03-17.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that N.D.C.C. § 54-52.1-10 exempts the premiums collected by the relevant provider relating to the dental, vision, and long-term care plans established under N.D.C.C. ch. 54-52.1 from the state premium tax imposed under N.D.C.C. § 26.1-03-17.

- ANALYSIS -

N.D.C.C. § 54-52.1-10 provides that "[a]ll premiums, consideration for annuities, policy fees, and membership fees collected under [N.D.C.C. ch. 54-52.1] are exempt from the tax payable pursuant to section 26.1-03-17." Apart from a technical correction in 1983, this section has remained the same since its enactment in 1971 as part of the new Uniform Group Insurance Program. See 1983 N.D. Sess. Laws ch. 319, § 34; 1971 N.D. Sess. Laws ch. 517, § 10. A similar exemption from the state premium tax for the Public Employees Retirement System (PERS) is found in N.D.C.C. § 54-52-09. N.D.C.C. § 26.1-03-17(1) provides that:

"the [insurance] commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization . . . doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy

fees, service fees collected by any third-party administrator provided administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year. . . .

The meaning of a statute must be sought initially from the statutory language. County of Stutsman v. State Historical Society, 371 N.W.2d 321, 325 (N.D. 1985). Words in a statute are to be given their plain, ordinary, and commonly understood meanings. Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990); N.D.C.C. §§ 1-02-02, 1-02-03. Consideration should be given to the ordinary sense of these words, the context in which they are used, and the purpose which prompted their enactment. County of Stutsman, 371 N.W.2d at 327.

The 1995 Legislature authorized the PERS Board to establish dental, vision, and long-term care plans as part of the Uniform Group Insurance Program. See 1995 N.D. Sess. Laws ch. 533. N.D.C.C. § 54-52.1-04.7 provides for the establishment of dental and vision plans and N.D.C.C. § 54-52.1-4.8 provides for the establishment of a long-term care plan. Both sections direct the PERS Board to receive bids for the plans pursuant to N.D.C.C. § 54-52.1-04. N.D.C.C. § 54-52.1-04 outlines the PERS Board's procedures to be used in receiving bids for hospital benefits coverage, medical benefits coverage, and life insurance benefits coverage.

In 1971 when the Uniform Group Insurance Program was enacted, both the employer and the employee contributed towards the cost of insurance coverage with the employee paying the cost of any optional coverage obtained for the employee's family. See 1971 N.D. Sess. Laws ch. 517, §§ 6, 7. It cannot be said, therefore, that the exemption under N.D.C.C. § 54-52.1-10 was meant to distinguish between employer and employee paid premiums. Thus, the issue presented centers on what the Legislature meant by the term "premiums collected." Collect is defined, in part, as "[t]o call for and obtain payment of. . . ." The American Heritage Dictionary 291 (2d coll. ed. 1991).

The plain language of N.D.C.C. § 54-52.1-10 exempts all premiums collected under N.D.C.C. ch. 54-52.1, which would include premiums collected relating to the vision and dental plans established under section 54-52.1-04.7 and the long-term care plan established under section 54-52.1-04.8. Because it is the provider that calls for and obtains the final payment of any premium, and it is the provider who is the relevant person to whom the granting of the exemption under

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N.D.C.C. § 54-52.1-10 applies, it is only reasonable to conclude that the premiums collected by the provider relating to the dental, vision, and long-term care plans established under N.D.C.C. ch. 54-52.1 are exempt from the state premium tax imposed in N.D.C.C. § 26.1-03-17. Although this issue was not specifically addressed in legislative hearings on House Bill No. 1126, 54th N.D. Leg. (1995), nonetheless "the Legislature is presumed to know the law when enacting legislation." State v. Clark, 367 N.W.2d 168, 170 (N.D. 1985).

- EFFECT -

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.

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