

LETTER OPINION
98-L-152

September 30, 1998

Honorable Shirley Meyer
State Representative
HC-03, Box 78
Watford City, ND 58854

Dear Representative Meyer:

Thank you for your letter asking whether the Clerks of Court Association and the North Dakota Registers of Deeds Association may lawfully hire a lobbyist and whether Senate Bill 2002 passed by the 1997 Legislature is a mandate to the North Dakota judiciary to devise a clerk of court consolidation plan.

I will first address whether the Clerks of Court Association and the North Dakota Registers of Deeds Association may lawfully hire a lobbyist. According to the records of the North Dakota Secretary of State's office, the Clerks of Court Association has registered individuals as lobbyists for that organization in 1995 and 1993. There apparently is no record of the North Dakota Registers of Deeds Association having registered any lobbyists.

As a general matter, there is no legal impediment for organizations such as those you listed from hiring lobbyists to represent their interests in the Legislature, provided that N.D.C.C. ch. 54-05.1, concerning regulation of lobbyists, is followed. Where a legal problem does arise, however, is if a lobbyist is paid with public funds. As noted by former Attorney General Helgi Johanneson:

Serious doubt exists as to the legality of creating a committee . . . where such committee acknowledgedly proposes to expend or actually expends public funds to engage in political activity in the form of lobbying for or against certain measures or any other form. However, if a nongovernmental committee were created and complied with the existing laws pertaining to lobbying, etc., and otherwise complied with the law, no legal objections would be raised.

Letter from Attorney General Helgi Johanneson to LeRoy H. Ernst (December 6, 1972). In a later opinion issued by this office on a related issue of whether a board of county commissioners could expend tax money for the purpose of hiring a lobbyist, it was noted:

This office issued an opinion on January 17, 1951, . . .
". . .as to whether it is legal for a county to hire a lobbyist to be registered for a legislative session and to use taxpayers money for the same".

That 1951 opinion noted that there was no statute which granted the county commissioners such powers and went on to emphasize that the counties have only those powers expressly granted by statute. Therefore this office took the position that ". . .it would be illegal for the county to employ a person such as you mentioned in your letter even though the same was not classified as a lobbyist".

This office has not reversed nor modified this position with respect to the power of county commissioners to hire lobbyists since the issuance of the 1951 opinion noted above. . . . It is therefore the continuing position and opinion of the Attorney General's Office that such activities would not be an allowable expenditure of tax dollars under present law.

Letter from Attorney General Allen I. Olson to Oscar Solberg (January 24, 1977). If a county may not lawfully use public funds to hire a lobbyist, it logically follows that associations of county officials also may not use public funds to hire a lobbyist.

The term "public funds" is defined in N.D.C.C. § 21-04-01(5) as follows:

5. "Public funds" includes all funds derived from taxation, fees, penalties, sale of bonds, or from any other source, which belong to and are the property of a public corporation or of the state, and all sinking funds of such public corporation or of the state, and all funds from whatever source derived and for whatever purpose to be expended of which a public corporation or the state have legal custody. The term includes funds of which any board, bureau, commission, or individual, created or authorized by law, is authorized to have control as the legal custodian for any purpose whatsoever whether such funds were derived from general or special taxation or the assessment of persons or corporations for a specific purpose. The term does not include funds of

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students or student organizations deposited in a student financial institution approved by and under the control of the school board.

The public corporation referred to in this definition of public funds includes a county, city, township, school district, and any body corporate except a private corporation. Id. Although this definition appears in the public depository chapter of North Dakota law, the North Dakota Supreme Court has recently quoted this definition of public funds with approval in Adams County Record v. Greater North Dakota Ass'n, 529 N.W.2d 830, 834 (N.D. 1995), and made it applicable to other situations.

As is apparent, this definition is quite broad; thus, any public moneys channeled to either the Clerks of Court Association or the North Dakota Registers of Deeds Association by a county or other public entity could not be used for the purpose of paying a lobbyist to appear before the North Dakota Legislative Assembly in the absence of a statute specifically permitting such an expenditure, and only then if such an expenditure otherwise conformed to other relevant provisions of North Dakota statutory and constitutional law. However, because it is my understanding that these organizations are nongovernmental entities,¹ they may utilize funds other than public funds to hire a lobbyist. For example, the individual members could contribute their own funds to be used for the payment of a lobbyist.

In view of the foregoing, and because there is no statute which would permit either a county or a nongovernmental association of county officials to use public money to hire a lobbyist, it is my opinion that the use of public funds for such activities is not lawful. However, such nongovernmental associations are free to use other unrestricted private funds for that purpose.

You also ask whether Senate Bill 2002 as passed by the 1997 Legislature mandates that the North Dakota judiciary devise a clerk of court consolidation plan. I found no provision in Senate Bill 2002 which explicitly mandates, orders, directs, or decrees that the

¹ These organizations are not mentioned or referred to in the North Dakota Century Code, unlike the North Dakota Association of Counties. See N.D.C.C. § 11-10-24. The Secretary of State's records indicate that the North Dakota Registers of Deeds Association is a nonprofit corporation. The Clerks of Court Association does not appear in the Secretary of State's records as a nonprofit corporation or other registrable entity; it presumably is an unincorporated association.

judicial branch devise a clerk of court consolidation plan. There are three provisions which somewhat touch on the question you raise. Section 1 of the bill appropriates \$100,000 for "[c]lerk of court consolidation funding" but does not mandate a consolidation plan. Section 6 of Senate Bill 2002 provides that

It is the intent of the fifty-fifth legislative assembly that counties use the provisions of chapters 11-10.2, 11-10.3, and 54-40.3 to combine or share the services of clerks of district court and that the judicial branch budget for the 1999-2001 biennium and future bienniums include funding necessary to efficiently fund administration of the district courts.

Section 7 of the bill amends N.D.C.C. § 11-10-02 to provide, in part:

In a county having a population of more than six thousand, the offices of clerk of district court and register of deeds may be combined into an office of register of deeds if the board of county commissioners, following consultation with the supreme court, adopts a resolution combining the offices no less than thirty days before petitions for nominations to county offices may first be filed for the primary election.

(Emphasis supplied.)

The primary purpose of statutory construction is to determine the intent of the Legislature, which must initially be sought from the language of the statute. Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990); County of Stutsman v. State Historical Society, 371 N.W.2d 321, 325 (N.D. 1985). "It must be presumed that the Legislature intended all that it said, and that it said all that it intended to say." City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940). Words in a statute are to be understood in their ordinary sense unless a contrary intention plainly appears, but any words explained in the North Dakota Century Code are to be understood as explained. N.D.C.C. § 1-02-02. Kinney Shoe Corp. v. State, 552 N.W.2d 788, 790 (N.D. 1996).

The statement of legislative intent contained in Section 6 merely provides that the judicial branch budget for the next and succeeding bienniums include funding necessary to efficiently fund administration of the district courts. While it may be advisable for the judicial branch to devise a clerk of court consolidation plan,

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and while one might even reasonably infer that such a consolidation plan would assist the judiciary in establishing future budgets to efficiently fund administration of the district courts, the language in question falls far short of that which would be necessary to mandate a consolidation plan.

Similarly, the reference in Section 7 of Senate Bill 2002 cannot be reasonably construed to require a clerk consolidation plan. All the language of the statute provides is that in a county having a population of more than 6,000, the offices may be combined into a single register of deeds office if the county commissioners adopt a resolution combining the offices in consultation with the Supreme Court. Again, while it may be useful or appropriate for the Supreme Court to have a clerk of court consolidation plan in place to assist in consultations with such counties, the plain wording of the statute does not mandate such a plan.

Consequently, it is my opinion, based on a plain reading of Senate Bill 2002, that it does not mandate the judicial branch devise a clerk of court consolidation plan.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jjf/pg