

N.D.A.G. Letter to Helphrey (March 27, 1989)

March 27, 1989

Ms. Juanita Helphrey
Executive Director
North Dakota Indian Affairs Commission
State Capitol
Bismarck, ND 58505

Dear Ms. Helphrey:

Thank you for your March 16, 1989, letter concerning the Native American Alcohol and Drug Abuse Education Fund ("Fund"). You ask which of the recent statutory enactments concerning the Fund should be followed in its implementation.

This Fund was first established in 1981 through the enactment of House Bill No. 1605. 1981 N.D. Sess. Laws ch. 45. That statutory enactment created the Fund, established provisions concerning its distribution, expressed legislative intent, and made an appropriation. The enactment included an expiration date of June 30, 1983.

In 1983 the legislative provision for the Fund did not take the form of a separate bill restricted to this subject. Instead, as part of the appropriations bill for the Indian Affairs Commission, the Legislature made an appropriation for the Fund. 1983 N.D. Sess. Laws ch. 13, § 1. The 1983 Act was comprised of four sections. Sections 2 and 3 of the act provided for the distribution of moneys from the Fund by the Indian Affairs Commission. Most importantly 1983 N.D. Sess. Laws ch. 13 did not include an expiration date within its provisions except for the appropriation contained within section 1. That appropriation was for the period July 1, 1983, through June 30, 1985. Thus, sections 2, 3, and 4, of the 1983 appropriations act continued in effect so long as the Legislative Assembly did not amend or repeal its provisions.

In 1985 the Fund was mentioned by the Legislature only in the appropriations act for the Indian Affairs Commission. See 1985 N.D. Sess. Laws ch. 53, § 1. Besides that appropriation, the 1985 Legislature took no further action with respect to the Fund. The 1985 Legislature did not repeat in the 1985 Indian Affairs Commission appropriations act the 1983 legislative provisions outlining the manner in which the Commission was to distribute moneys out of this Fund.

Finally, the 1987 appropriations bill for the Indian Affairs Commission contained an appropriation for the Fund, but provided no further information on the manner in which it was to be distributed. See 1987 N.D. Sess. Laws ch. 7 § 1.

The 1981 enactment establishing the Native American Alcohol and Drug Abuse Education Fund expired on June 30, 1983. Thus, its provisions may not be consulted in terms of substantive law presently in effect. However, the provisions of the 1983 appropriations act

for the Indians Affairs Commission were enacted into law and did provide for the Fund and its distribution. Although the 1983 appropriation expired June 30, 1985, that expiration did not affect the remaining provisions of the act (i.e., 1983 N.D. Sess. Laws ch. 13, §§ 2, 3). These remaining provisions of the 1983 act describe the manner in which moneys from the Fund are to be distributed.

In the absence of legislative action amending or repealing 1983 N.D. Sess. Laws ch. 13, §§ 2, 3, these provisions still have the force and effect of law and should be followed in the implementation of this fund.

Your letter notes that the 1985 and 1987 appropriations acts provided that those acts which were in conflict therewith were hereby repealed. However, there is no conflict between the provisions of 1983 N.D. Sess. Laws ch. 13, § 2, 3, and the 1985 and 1987 appropriations acts. All the 1985 and 1987 acts accomplish is the appropriation of a sum of money for the Fund. No mention is made concerning the distribution of moneys from the Fund. Instead, that information is found in the portions of the 1983 appropriations act which have never been amended or repealed by the Legislature. As there is no conflict with the 1987 appropriations act, the provisions of 1983 N.D. Sess. Laws. ch. 13, § 2, 3, still apply.

Your final question concerns the Commission's authority to use discretion in expending moneys from the Fund. As previously noted, 1983 N.D. Sess. Laws ch. 13, § 2, 3, applies in determining when expenditures of moneys from this Fund may occur. As long as these legislative provisions have been satisfied, the Commission may exercise discretion in distributing moneys from the Fund.

Actually, the legislative provisions of the 1983 act contemplate some amount of discretion within the Commission. For example, before an Indian Reservation may receive monies from the Fund, it must make application to the Commission "showing such information as required based on early educational program criteria developed and approved by the Commission". 1983 N.D. Sess. Laws ch. 13, § 3. Clearly, some discretion would be involved in developing and approving the criteria which must be satisfied prior to the expenditure of Fund moneys.

I hope this information is helpful.

Sincerely,

Nicholas J. Spaeth

vkk