

N.D.A.G. Letter to Witham (April 5, 1989)

April 5, 1989

Mr. Lyle Witham
McHenry County State's Attorney
P.O. Box 390
Towner, ND 58788

Dear Mr. Witham:

Thank you for your March 15, 1989, letter inquiring whether the asbestos abatement levy authorized by N.D.C.C. § 57-15-17.1 may be used for costs relating to the "encapsulation" of asbestos. N.D.C.C. § 57-15-17.1 authorizes a levy for the "removal" of asbestos. You indicate that, in your opinion, the levy may be used only for "removal," not "encapsulation," of the asbestos.

Both the language and the legislative history of N.D.C.C. § 57-15-17.1 support this interpretation.

On March 11, 1987, the House Education Committee in considering House Bill 1675 (which was enacted as section 57-15-17.1) discussed whether the bill should be amended to include "encapsulation" as well as "removal" of asbestos. Representative Halmrast commented that he felt that "encapsulation" should probably be discouraged as it was not as final a solution as "removal." Hearing on H. 1675 Before the House Comm. on Education, 50th Leg., (March 11, 1987) (Statement of Rep. Halmrast). The Legislature did not amend the bill to include "encapsulation." Clearly, the Legislature understood and recognized the difference between "removal" and "encapsulation" and authorized a levy only for the "removal" of asbestos.

The relevant statutory words also support your interpretation that the levy is only authorized for the "removal" of asbestos. "Removal" or to "remove" means a taking away. Webster's New World Dictionary (2d Coll. Ed. 1986). "Encapsulation" means to enclose. Id. The statute is not ambiguous and authorizes a levy only for "removal."

Although it could be argued that the spirit of the law is to authorize levies for all abatement of asbestos, it is clear that when a statute is free from ambiguity, the letter of the statute cannot be disregarded under the pretext of pursuing its spirit. N.D.C.C. § 1-02-05; Wills v. Schroeder Aviation, Inc., 390 N.W. 2d 544 (1986).

For these reasons, I agree with your interpretation that the levy authorized by N.D.C.C. § 57-15-17.1 is only authorized for the removal of asbestos.

I hope this information has been helpful.

Sincerely,

Nicholas J. Spaeth
dfm