

N.D.A.G. Letter to Olson (April 11, 1989)

April 11, 1989

Honorable Alice Olson
House of Representatives
State Capitol
Bismarck, ND 58505

Honorable Orville Schindler
House of Representatives
State Capitol
Bismarck, ND 58505

Dear Representative Olson and Representative Schindler:

Thank you for your March 31, 1989, letter inquiring whether House Bill No. 1449 and N.D.C.C. § 20.1-03-12.1 conflict with one another concerning the deposit and expenditure of funds generated by the habitat restoration stamp program. In responding to your inquiry, I have examined the proposed second engrossment of Reengrossed House Bill No. 1449.

N.D.C.C. § 20.1-03-12.1 requires the issuance of a habitat restoration stamp for every resident and nonresident general game license. This statute also establishes the habitat restoration stamp fund. The purpose of the fund is to provide moneys for the leasing of privately owned lands for wildlife habitat. This fund consists of all moneys generated by the habitat restoration stamp program, the habitat restoration stamp print, the interest earned on the habitat stamp program, the interest earned on any unspent habitat restoration stamp programs funds, and any and all other moneys resulting from the habitat restoration stamp program. The statute also prohibits the use of more than 10% of the fund for administrative purposes.

The proposed second engrossment to Reengrossed House Bill No. 1449 establishes a wildlife habitat restoration trust fund. Expenditure of this trust fund is authorized for the leasing of private land to establish or preserve wildlife habitat. The fund may also be used for food plot development and for cost sharing agreements to carry out a private land habitat improvement program. No portion of the trust fund may be used for administrative purposes.

The wildlife habitat restoration trust fund is funded from three sources. The first funding source is section 3 of the proposed second engrossment which transfers up to \$750,000 from the Game & Fish operating fund. This transfer probably represents funds relating to the habitat restoration stamp program (e.g., revenue from stamp print artwork, interest on stamp program funds) which were deposited in the Game & Fish operating fund rather than in the habitat restoration stamp fund established by N.D.C.C. § 20.1-03-12.1. The

deposit of these funds in the Game & Fish operating fund resulted from prior opinions from this office. Letter from Attorney General Wefald to Deputy Commissioner Schroeder (March 22, 1983); letter from Attorney General Spaeth to Rep. Winkelman (September 24, 1986); letter from Attorney General Spaeth to Rep. Schindler (December 16, 1986).

The 1987 Legislative Assembly, however, amended N.D.C.C. § 20.1-03-12.1 to require the deposit of habitat restoration stamp fund program moneys in the habitat restoration stamp fund rather than the Game & Fish operating fund. 1987 N.D. Sess. Laws ch. 278. The 1987 amendment became effective on July 1, 1988, *id.* at 2, and did not contain a declaration of retrospective application.

The second funding source is section 4 of the proposed second engrossment which requires the sum of \$100,000 to be transferred annually from the Game & Fish operating fund to the trust fund. Finally, section 5 of the proposed second engrossment permits a continuing appropriation of any interest earned by moneys contained in the trust fund.

I find no conflict between N.D.C.C. § 20.1-03-12.1 and the proposed second engrossment of Reengrossed House Bill No. 1449. The bill, in its second engrossment, allows a transfer of funds from the Game & Fish operating fund to the wildlife habitat restoration trust fund. There is no transfer of moneys from the habitat restoration stamp fund. Although the funds may represent habitat restoration stamp fund program moneys, such funds are not subject to the provisions of the 1987 amendment to N.D.C.C. § 20.1-03-12.1. The 1987 amendment has only a prospective application and would have no effect on the transfer of funds currently described in the proposed second engrossment of House Bill No. 1449.

Thus, the restrictions imposed by N.D.C.C. § 20.1-03-12.1 concerning the use of the habitat restoration stamp fund will not apply to those moneys originally deposited in game and fish operating fund which may be transferred to the wildlife habitat restoration trust fund.

I also find no conflict between N.D.C.C. § 20.1-03-12.1 and the proposed second engrossment to Reengrossed House Bill No. 1449 as it relates to the depositing of habitat restoration stamp fees and other moneys generated by the stamp program. These moneys will continue to be deposited in the habitat restoration stamp fund created by N.D.C.C. § 20.1-03-12.1.

Should you have further questions or comments concerning this matter, please feel free to contact me at your convenience.

Sincerely,

Nicholas J. Spaeth

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