

Office of the Attorney General
State of North Dakota

Opinion No. 85-40

Date Issued: October 18, 1985

Requested by: John A. Graham
Executive Director
Department of Human Services

--QUESTION PRESENTED--

Whether 1985 N.D. Sess. Laws 134, § 1 confers authority upon the Bank of North Dakota and the North Dakota Department of Human Services to make available money out of loan fund number 3 to Share House, a treatment facility for chemically addicted adolescents.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that 1985 N.D. Sess. Laws 134, § 1 does confer authority upon the Bank of North Dakota and the North Dakota Department of Human Services to make available money out of loan fund number 3 to Share House, a treatment facility for chemically addicted adolescents.

--ANALYSIS--

1985 N.D. Sess. Laws 134, § 1 (now codified as N.D.C.C. § 6-09.6-01.2) states as follows:

SECTION 1. Developmentally disabled facility loan program no. 3. There is hereby created a developmentally disabled facility loan fund program no. 3 for the purpose of making loans to nonprofit corporations, organized in the localities in which facilities are proposed to be located, for project costs, including the cost of real estate, construction, reconstruction, acquisition, furnishings, and equipment, and administrative costs related to the establishment thereof, of facilities for developmentally disabled, chronically mentally ill, and physically disabled persons. The loan fund may borrow an amount not to exceed \$4,951,145 from the common school trust fund to finance the program. The loan fund program shall be administered by the Bank of North Dakota in the same manner the Bank administers the program established by section 6-09.6-01 and 6-09.6-02 through 6-09.6-05, except that all payments of principal and interest shall be credited by the Bank to the lands and minerals trust fund after the Bank has deducted a service fee for administering the program equivalent to an annual fee of one-half of one percent of the principal balance of the outstanding loans.

According to the March 30, 1985, minutes of the legislative conference committee considering SB 2249 (which became 1985 N.D. Sess. Laws 134), concern was raised that funding be provided for Share House in Fargo:

Senators Streibel, Tweten, Mushik, and Representatives Winkelman, Unhjem, and Kelly were appointed to this committee.

Rep. Winkelman stated that the amount of reduction in the amount of money that was requested was due to information that was received stating that there was to be some payback that is to be allocated during the biennium of \$200,000. Than [sic] there was an additional \$200,000 for a home in Minot. That is the reason for the increase from the \$4.5 million from the Senate and the \$4.7 million from the House.

Senator Mushik stated that this will save the interest of the Land and Mineral Trust Fund. Rep. Unhjem stated that that was correct. Senator Mushik than [sic] asked if the number of facilities would be left the same number. Rep. Unhjem stated that they would.

Rep. Unhjem stated that there was some concern for the Share House in Fargo. There should be some funding for that.

Rep. Unhjem made the motion that the House recede from its amendments and that the engrossed bill be further amended to increase the [sic] of money that can be borrowed from the common school trust fund for the DD loan fund No. 3 to \$4,971,145. Rep. Kelly seconded the motion. Motion carried by an unanimous yea.

Rep. Kelly asked if OMB knew about that extra \$200,00 [sic] to build that house. Mr. Dave Clark, OMB, stated that they did not but there would not be a problem with authorizing the facility. (Hearing on S.B. 2249 Before a Conference Committee, 49th Legislative Assembly, March 30, 1985.)

While there is no specific reference in the statute to facilities for chemically addicted persons, it is clear that there was legislative understanding that the statute was broad enough to include such facilities. Support for including chemical addiction as a mental illness is found in the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM III), which classifies chemical addiction or substance abuse as a mental disorder. Given the legislative history of the statute, Share House as a treatment facility for chemically addicted adolescents is eligible to make application for funds under the statute.

This opinion is limited to the facts as presented and is not intended to interpret terms or situations outside the scope of the opinion.

--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.

Nicholas J. Spaeth
Attorney General