

LETTER OPINION
95-L-53

March 3, 1995

The Honorable John T. Traynor
North Dakota Senate, District 15
State Capitol
Bismarck, ND 58505-0360

Dear Senator Traynor:

Thank you for your letter regarding the preference provided to wartime veterans under N.D.C.C. ch. 37-19.1 for employment with governmental agencies.

Your letter asks whether veterans' preference applies to the position of executive director of a local housing authority. Veterans' preference is not required "when the position to be filled is that of . . . the chief deputy or private secretary of an elected or appointed official." N.D.C.C. ? 37-19.1-02(5). The governing body of a city or county appoints the commissioners of the housing authority, N.D.C.C. ? 23-11-08, who in turn "may employ a secretary who must be its executive director" N.D.C.C. ? 23-11-08. Although this section refers to the executive director as a "secretary," the housing authority in this case apparently believes that its executive director acts as its "chief deputy." Thus, your letter concerns the meaning of both these terms as used in N.D.C.C. ? 37-19.1-02(5).

"The primary purpose of statutory construction is to ascertain the intent of the Legislature." Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990). This intent "initially must be sought from the language of a statute." Id. Because "chief deputy" and "private secretary" are not defined in N.D.C.C. ch. 37-19.1, they must "be given their plain, ordinary, and commonly understood meaning." Id., citing N.D.C.C. ? 1-02-02. In addition, legislative history may be used to determine legislative intent if the meaning of a statute is ambiguous or unclear. Id. The legislative history of N.D.C.C. ch. 37-19.1 indicates that it was patterned after a Minnesota statute. See Hearings on S. 2113 Before the Senate Social Welfare and Veteran's Affairs Comm. (January 12, 1973) (statement of William Williamson); Minn. Stat. Ann.

? 197.46 (West 1992). Therefore, cases from Minnesota are also helpful in interpreting the plain meaning of "chief deputy" and "private secretary."

There have been no judicial decisions or opinions from this office interpreting the meaning of "private secretary" as used in N.D.C.C. ? 37-19.1-02(5). There are several definitions of "secretary," including a person who presides over an administrative agency or department. See The American Heritage Dictionary 1108 (2d coll. ed. 1991). However, when used in conjunction with "private," I believe the Legislature intended "secretary" to mean a "person employed to handle correspondence, keep files, and do clerical work" of a more personal and confidential nature for an elected or appointed official. Id.

"Chief" is defined as "[h]ighest in rank, authority, or office." The American Heritage Dictionary 265 (2d coll. ed. 1991). Thus, the use of the word "chief" to describe "deputy" indicates that the position excluded from veterans' preference is that of the highest-ranking deputy, and that an elected or appointed official can have only one such position. However, a "chief deputy" is not simply the highest-ranking employee of a governmental official. A "chief deputy" also is authorized to "act in behalf of [the] principal in all matters in which the principal may act." State v. Mangni, 43 N.W.2d 775, 779 (Minn. 1950) (quotation omitted); see also The American Heritage Dictionary 384 (2d coll. ed. 1991).

The unique relationship between governmental officials and their chief deputy or private secretary demands a large amount of trust, confidence, and personal compatibility. As a Minnesota court observed regarding the position of chief deputy sheriff, a public official "needs one person outside the civil service process in whom to vest absolute trust and fidelity." Gramke, 453 N.W.2d at 26. The "chief deputy" and "private secretary" exceptions in N.D.C.C. ? 37-19.1-02(5) promote these close personal working relationships by allowing governmental officials to hire the person of their choice without being restricted by the veterans' preference law. N.D.C.C. ? 54-44.3-20 serves the same purpose by excluding the positions of personal assistant and private secretary of elected state officials from classified service.

The burden of proving that a position is exempt from veterans' preference is on the employing entity. See Gramke v. Cass

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County, 453 N.W.2d 22, 25 (Minn. 1990). Subsection 5 of N.D.C.C. ? 37-19.1-02 does not authorize an elected or appointed official to hire a chief deputy or private secretary. It simply provides that these positions, if authorized, may be filled without providing veterans' preference. Thus, before refusing to give veterans' preference, an employing entity must also show that it has the authority to hire a "chief deputy" or "private secretary."

It is unclear whether the executive director of a local housing authority is a "chief deputy" or "private secretary" under N.D.C.C. ? 37-19.1-02(5). A housing authority may delegate to its executive director under N.D.C.C. ? 23-11-07 "such powers and duties as it deems proper," including powers and duties that a chief deputy or private secretary would normally be authorized to perform. However, statutes expressly authorizing certain officials to appoint a "chief deputy" or "private secretary" would be unnecessary if the power to delegate similar responsibilities to an employee was sufficient to authorize such an appointment. See N.D.C.C. ?? 11-10-11, 44-03-01. Thus, a persuasive argument can be made that a governmental official may only appoint a chief deputy or private secretary pursuant to express statutory authority.

This office has a long-standing policy against giving an opinion on an issue involved in pending litigation. I understand the housing authority mentioned in your letter has already hired a non-veteran as executive director because it believed the "chief deputy" exception applied to that position. Wartime veterans who applied for the position but did not receive veterans' preference have the right to appeal this decision under N.D.C.C. ? 37-19.1-04. Therefore, I believe it is inappropriate for this office to issue a formal opinion. Due to the uncertainty in this area, you may want to consider clarifying the meaning of "chief deputy" and "private secretary" as used in N.D.C.C. ? 37-19.1-02 by amending the statute.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jcf/vkk
cc: Ray Harkema, Veterans Affairs Department