

**LETTER OPINION**  
**95-L-42**

February 10, 1995

Mr. Henry C. "Bud" Wessman  
Executive Director  
Department of Human Services  
600 East Boulevard Avenue  
Bismarck, ND 58505-0250

Dear Mr. Wessman:

Thank you for your January 5, 1995, letter asking whether the term "existing debt" in 1993 N.D. Sess. Laws ch. 284 (1993 H.B. No. 1274) means long-term debt related to the cost of fixed assets, or long-term debt and other current liabilities shown on a balance sheet.

1993 N.D. Sess. Laws ch. 284 states, in part:

**Maximum annual return on investment.** For-profit institutions or facilities must be allowed an annual return on investment in fixed assets related to client care. The maximum return on investment must be established based upon the existing debt over the original asset cost and must be determined as follows: . . . .

This language suggests "existing debt" could mean either all debts and liabilities appearing on the liability side of a balance sheet, or some lesser quantum of debt.

"A statutory provision is ambiguous if it is susceptible to differing, but rational, meanings." Zuger v. North Dakota Ins. Guar. Ass'n, 494 N.W.2d 135, 137 (N.D. 1992). If a statute is ambiguous, the intention of the Legislature may be determined by consideration of the object sought to be attained and the legislative history, among other things. N.D.C.C. ? 1-02-39. Because the legislation in question has two rational but different meanings, it is ambiguous and legislative history must be reviewed.

The legislative history indicates that the intent of 1993 N.D. Sess. Laws ch. 284 was to create a method for establishing a return or margin for for-profit providers of services to

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developmentally disabled individuals, because the existing North Dakota Department of Human Services rule (N.D. Admin. Code ? 75-04-05-14) did not result in such a return. Testimony and exhibits before legislative committees indicate that long-term debt in the nature of mortgages and loans issued or incurred to acquire the fixed assets related to client care was the kind of debt intended to be covered by the language of the statute. See Hearing on H. 1274 Before the House Comm. on Appropriations, 53rd N.D. Leg. (February 11, 1993) (Statement of Don Thompson). Hearing on H. 1274 Before the Senate Comm. on Human Services, 53rd N.D. Leg. (March 15, 1993) (Statement of Don Thompson). This testimony indicates that those presenting and hearing the testimony were aware that it was not any and all debts or liabilities that would be compared to the cost of fixed assets for calculating the return, but, rather, only long-term debt incurred in obtaining those assets that would be considered.

In addition, from the language used in House Bill No. 1247 it is evident that the object sought to be attained in this bill was to provide for-profit facilities "an annual return on investment in fixed assets. . . ." Id. In enacting a statute it is presumed a reasonable result is intended. N.D.C.C. ? 1-02-38(3). In that light, it would not be reasonable to construe the phrase "existing debt" as encompassing a number of the liabilities listed on the balance sheet you supplied, such as "compensation," "payroll taxes," "retirement benefits," and "accounts payable," since these liabilities bear little or no relationship to the "fixed assets" of a facility or to the "original asset cost." Consequently, there would be no reason to introduce such liabilities into the equation provided in House Bill No. 1247 in order to determine a return on investment in fixed assets.

It is therefore my opinion that the phrase "existing debt" used in 1993 N.D. Sess. Laws ch. 284 (1993 H.B. No. 1274) is the long-term debt incurred to obtain the fixed asset combined with the current maturities of the long-term debt. These are the figures identified in the balance sheet you sent with your letter as "current maturities of long-term debt" and "long-term debt, net of current maturities."

Sincerely,

Mr. Henry C. "Bud" Wessman  
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