

N.D.A.G. Letter to DeMers (Dec. 30, 1992)

December 30, 1992

Honorable Judy L. DeMers
State Representative
1826 Lewis Boulevard
Grand Forks, ND 58201

Dear Representative DeMers:

Thank you for your September 23, 1992, letter concerning the use by the Department of Human Services (Department) of funds appropriated by the 1991 Legislative Assembly to enhance services for the seriously mentally ill.

You advise that S. Bill 2002, as amended, "specifically appropriated funds for an eight bed long-term SMI [seriously mentally ill] facility in Grand Forks. However, the Department determined that those funds would be diverted for the purpose of establishing independent apartments for SMI persons." You specifically inquire whether the Department is required "to strictly adhere to the language relating to those specific programs."

You request an opinion as to whether the Department of Human Services may expend the appropriated funds for apartments for the seriously mentally ill rather than for an eight bed facility in Grand Forks. If my opinion is that the Department had discretion in expending the funds, you inquire further whether there are "any circumstances or legislative directives that can be imposed in the general area of appropriations for specific purposes."

S. Bill 2002 was amended by the 1991 Legislative Assembly to provide \$2,836,409 designated for "[s]eriously mentally ill enhancement." 1991 N.D. Sess. Laws ch. 29, § 1(6). 1991 N.D. Sess. Laws ch. 29, § 1(6) provided:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of human services and its various divisions for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

. . . .

Subdivision 6.

FIELD SERVICES AND PROGRAM DEVELOPMENT

Salaries and wages	\$ 5,468,634
Information services	644,689
Operating expenses	94,304
<u>Seriously mentally ill enhancement</u>	<u>2,836,409</u>
Grants, benefits, and claims	<u>43,469,292</u>
Total all funds	\$59,429,510
Less estimated income	<u>33,391,969</u>
Total general fund appropriation	\$26,037,541

(Emphasis supplied.)

Appropriation measures are construed using a method similar to that used to construe other enactments not containing an appropriation. See City of Fargo, Cass Cty. v. State, 260 N.W.2d 333, 338 (N.D. 1977) ("legislative enactments have equal standing and are subject to" rules of statutory construction concerning conflicts). 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 (N.D. 1990). The Legislature's intent initially must be sought from the language of a statute. County of Stutsman v. State Historical Soc., 371 N.W.2d 321, 325 (N.D. 1985). It is only when statutory language is ambiguous or of doubtful meaning that resort may be had to extrinsic aids such as legislative history to interpret a statute. Id. at 325.

With respect to the appropriation line item designated for "[s]eriously mentally ill enhancement," there is a latent ambiguity because the meaning cannot be determined without reference to extrinsic sources. Reference to the legislative history to ascertain the Legislature's intent is therefore appropriate. N.D.C.C. § 1-02-39.

Discussion concerning the services to be provided by the appropriation for the seriously mentally ill enhancement is inconsistent throughout the legislative history. In the final analysis, however, a conference committee resolved the issues by appropriating \$2,836,409 for "[s]eriously mentally ill enhancement." Projects totalling this amount are specifically listed in the "STATEMENT OF PURPOSE OF AMENDMENT" prepared by the Legislative Council in the conference committee report. Report of Conference Committee on S. Bill 2002, 52d N.D. Leg. (April 10, 1991) (STATEMENT OF PURPOSE OF AMENDMENT, page 15 of "Proposed Amendments to Engrossed Senate Bill No. 2002"). The statement of purpose of amendment listed the projects included in the "seriously mentally ill enhancement line" in S. Bill 2002. Among those was an "8 bed long-term SMI (seriously mentally ill) facility."

The Legislature's intent is expressed in the conference committee report specifying an "8 bed long-term SMI facility" with a start date and a designated amount from the general fund. Agencies have an obligation to expend funds in accordance with the appropriation and to follow legislative intent. Although the import of legislative intent, whether directory or mandatory, is an undecided question, in my opinion, the Department should have followed the language set out in the Legislature's expression of the purpose of the amendment and established an "8 bed long-term SMI facility."

Sincerely,

Nicholas J. Spaeth

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