

**LETTER OPINION
93-L-196**

June 25, 1993

Honorable David Drovdal
State Representative
HC1, Box 22
Arnegard, ND 58835

Dear Representative Drovdal:

Thank you for your May 19, 1993, letter requesting an opinion on whether House Bill 1416 prohibits an economic development or tourism organization from conducting games of chance under North Dakota Century Code ch. 53-06.1.

House Bill 1416, as originally submitted to the 53rd North Dakota Legislative Assembly, pertained to the calculation of expenses incurred for games of chance. After passage of House Bill 1416 by the House, the Senate substantially amended this bill through a "hoghouse" amendment consisting of the provisions of Senate Bill 2056 which had previously been defeated by the House. Senate Bill 2056 amended numerous provisions of N.D.C.C. ch. 53-06.1 including the definitions of organizations eligible to conduct games of chance and eligible uses for net proceeds of gaming funds. House Bill 1416 was passed by the Senate with the proposed amendments. This bill was then transmitted to the House which refused to concur in the Senate amendments. House Bill 1416 was then referred to a conference committee.

Included within the amendments to House Bill 1416 were changes to the definitions of a "civic and service club" and "eligible uses" of net proceeds of gaming funds as found in N.D.C.C. ? 53-06.1-01. The term civic and service club was amended to include "a booster club, community betterment, civic, economic development, tourism, recreation, or similar

Representative David Drovdal
June 25, 1993
Page 2

organization."

The eligible use amendments authorized the use of net proceeds derived from gaming activity for:

1. Stimulating and promoting community-based economic development programs within North Dakota that improve the quality of life of community residents; and
2. Developing, promoting, and supporting tourism within North Dakota.

The specific inclusion of economic development and tourism programs as eligible uses was a significant change to existing law.

It is important to note that the presently existing law does not prohibit an economic development or tourism organization from conducting games of chance if the specific organization meets the definition of a "civic and service club" in N.D.C.C. § 53-06.1-01(5) or the definition of an "other public spirited organization" as defined in N.D.C.C. § 53-06.1-01(18).

However, presently existing law does restrict an economic development or tourism organization in the use of net proceeds obtained from gaming activity. Since current law does not list economic development and tourism programs as eligible uses, any economic development or tourism organization which otherwise meets the definition of an organization eligible to conduct games of chance must donate the net proceeds to other eligible uses and such proceeds could not be retained for its own use in economic development or tourism activities. In other words, an economic development or tourism organization would operate as an organization equivalent to a class A gaming licensee and not as a class B licensee.

House Bill 1416, as finally passed, retained the economic development and tourism eligible uses as proposed in the amendments to House Bill 1416 which were the subject of conference committee action. The retention and approval of these amendments in House Bill 1416 would permit economic development and tourism organizations, if they otherwise meet the

Representative David Drovdal
June 25, 1993
Page 3

definition of an eligible organization authorized to conduct games of chance, to use net proceeds from gaming activity for their own eligible purposes. These amendments provided a financial incentive for these types of organizations, if otherwise eligible to conduct games of chance, to engage in gaming activity.

As noted earlier, House Bill 1416 as amended and submitted to the conference committee specifically included a booster club, community betterment, civil, economic development, tourism, recreation, or similar organization as a "civic and service organization" eligible to conduct games of chance. N.D.C.C. ch. 53-06.1. As finally adopted, House Bill 1416 did not include this specific language within the definition of a "civic and service organization."

The question presented is whether removal of this language prohibits an economic development or tourism organization from qualifying as an eligible civic and service organization to conduct games of chance. It is my opinion that the deletion of this language does not prohibit an economic development or tourism organization from qualifying to conduct games of chance if that organization otherwise meets the specific requirements of N.D.C.C. ? 53-06.1 as an eligible organization.

As stated previously, economic development and tourism organizations are not barred under current law from conducting games of chance if the organizations qualify as one of the specific entities authorized to conduct games of chance as defined in N.D.C.C. ? 53-06.1-01. A review of the legislative history of House Bill 1416 fails to disclose any legislative intent to specifically exclude economic development and tourism organizations from conducting games of chance by virtue of the deletion of the "booster club, community betterment club, civic, economic development, tourism, recreation, or similar organization" language from the definition of "civic and service organization" in N.D.C.C. ? 53-06.1-01.

A statute must be construed to fulfill the objective and intent of the Legislature. Larson v. Wells County Water Resource Board, 385 N.W.2d 480 (N.D. 1986). If the language of a statute is ambiguous or of doubtful meaning, certain extrinsic aids may be used to

Representative David Drovdal
June 25, 1993
Page 4

determine the intention of the Legislature. Monson v. Nelson, 145 N.W.2d 892 (N.D. 1966). Legislative history of an enactment may be considered in determining the intention of the Legislature. N.D.C.C. ? 1-02-39(3).

During the April 23, 1993, House Bill 1416 conference committee discussions concerning the language subsequently deleted from the definition of "civic and service organization," conference committee members expressed concerns that this language may limit those civic or service organizations desiring to conduct gaming. Senator John Andrist, a member of the conference committee, made a motion to strike the questioned language, as he did not believe the language was necessary and that fine-tuning the definition did not change anything. During the conference committee meeting, Representative Kelsch, chair of the conference committee, inquired as to whether organizations listed in the questioned language could still come within the definition if the language was removed. In response to that question, Assistant Attorney General Richard Tessier stated:

That's what we're using right now. That's what we're saying, most of them do not qualify at this time due to the way they're structured, but we do have some. There are several who qualify; they donate their money and have been for several years.

Minutes of House Bill 1416 Conference Committee Meeting of April 23, 1993.

After completion of discussion of the deletion of the language listing booster clubs, community betterment, civic, economic development, tourism, recreation, or similar organizations from the definition of a "civic and service organization," Senator Andrist's motion to delete that language from House Bill 1416 was unanimously approved.

Upon review of the legislative history of House Bill 1416, it is my conclusion that the deletion of the listing of specific clubs or organizations in the definition of a "civic and service organization" as found in N.D.C.C. ? 53-06.1-01 was not intended by the Legislative Assembly to limit or prohibit those

Representative David Drovdal
June 25, 1993
Page 5

specific organizations from conducting games of chance if such organizations otherwise qualify as an organization eligible to conduct games of chance under N.D.C.C. ch. 53-06.1. I have enclosed pertinent portions of the testimony before the April 23, 1993, House Judiciary Committee on House Bill 1416.

Therefore, it is my opinion that House Bill 1416 does not prohibit an economic development or tourism organization from conducting games of chance under N.D.C.C. ch. 53-06.1 if otherwise qualified as an eligible organization under that chapter.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

rpb/jfl
Enclosures

Representative David Drovda1
June 25, 1993
Page 6

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