

LETTER OPINION
93-L-319

November 5, 1993

Mike Schwindt, Director
Management Services
Department of Human Services
600 E Boulevard
Bismarck, ND 58505-0250

Dear Mr. Schwindt:

Thank you for your October 14, 1993, letter asking whether donations received by the State Hospital or the Developmental Center without terms or conditions on their use may be used for any purpose connected with the institution or if they must be used only for the repair and upkeep of the institution's physical plant.

North Dakota Century Code (N.D.C.C.) ? 25-01-10 provides:

Supervising officer may accept gifts and bequests - State treasurer to have custody of funds.

The supervising officer may accept in the name of the state and hold in trust for any institution mentioned in this chapter any lands conveyed or devised and any money or other personal property given or bequeathed for application to any purpose connected with such institution. All moneys and property coming into the hands of the supervising officer as grants, donations, devises, gifts, and bequests must be used for the specific purpose for which they are granted, donated, devised, bequeathed, or given. If no terms are imposed upon the use of any grant, donation, devise, bequest, or gift, it must be used for the general maintenance of the institution for the benefit of which it is made.

The supervising officer is the executive director of the Department of Human Services. N.D.C.C. ? 25-01-

Mike Schwindt, Director
November 5, 1993
Page 2

01(9). Institutions mentioned in chapter 25-01 include the State Hospital for the Mentally Ill, N.D.C.C. ? 25-01-01(7); and the Developmental Center at Grafton, N.D.C.C. ? 25-01-06.

When interpreting statutory language, the words used are to be understood in their ordinary sense unless there is a plain intention to the contrary or the words are otherwise defined in the code. N.D.C.C. ? 1-02-02. Words and phrases used in a statute are construed according to their context and the rules of grammar, but technical words and phrases which have acquired a particular meaning in the law or are defined by statute will be construed according to that meaning. N.D.C.C. ? 1-02-03. The Legislature's intent must be initially sought from the statutory language. County of Stutsman v. State Historical Society, 371 N.W.2d 321, 325 (N.D. 1985).

Donations received by the State Hospital or the Developmental Center without attached conditions must be used for the "general maintenance" of the institution. N.D.C.C. ? 25-01-10. The phrase "general maintenance" is not defined in the code. Therefore, the meaning of "general maintenance" must be found in the plain meaning of those words.

The word "general" has been defined as meaning relating to, concerned with, applicable to the whole or every member of a class or category, as not being limited in scope, area, or application, or not limited to one class of things. The American Heritage Dictionary, 552 (2d. Coll. Ed. 1991). Definitions for "maintenance" include the act of maintaining, the state of being maintained, the work of keeping something in proper condition, or a means of maintaining or supporting. Id. at 757. "Maintain" has been defined as meaning to continue or carry on, to preserve or keep in a given existing condition, to provide for, to keep in existence or sustain, or to defend against danger or attack. Id. at 757. Therefore, the plain meaning of the statutory language "general maintenance," as applied to donations received by the State Hospital or the Developmental

Mike Schwindt, Director
November 5, 1993
Page 3

Center without condition, is that the funds can be used for any purpose reasonably related to the benefit of the institution. This definition is not strictly limited to the institution's physical plant.

An expansive definition of "general maintenance" is also supported by the first sentence of N.D.C.C. ? 25-01-10, which provides that the supervising officer may accept and hold in trust money or property given to an institution "for application to any purpose connected with such institution." N.D.C.C. ? 25-01-10. In this context, the plain meaning of the phrase "general maintenance" would not be limited to the institution's physical plant.

The legislative intent is determined by examining all statutes relating to the same subject matter and attempting

Mike Schwindt, Director
November 5, 1993
Page 4

to harmonize, if possible, any apparently conflicting provisions. In Interest of B.L., 301 N.W.2d 387, 390 (N.D. 1981). All statutes relating to the same subject matter must be construed together and full force and effect is to be given to the legislative intent. Kroh v. American Family Insurance, 487 N.W.2d 306, 308 (N.D. 1992). Therefore, the interpretation given to N.D.C.C. ? 25-01-10 should be consistent with related statutes.

General authority has been granted to state institutions and the state government to accept donations, and the money or title shall vest in the state government to be held by it in trust "for the benefit and use of the institution to which or for whose benefit such . . . gift is made." N.D.C.C. ? 1-08-02. Unless it is otherwise provided by the donor, the property or money may not be diverted or used for other purposes. Id. The general maintenance of the institution receiving such a gift under N.D.C.C. ? 25-01-10 can be given a construction consistent with N.D.C.C. ? 1-08-02 when "general maintenance" is defined as including any purpose for the benefit and use of the institution.

Further support for defining the word "maintenance" as including any purpose for the benefit of the institution is found in statutory directions requiring the Department of Human Services to request resources "sufficient to ensure maintenance of" the State Hospital's or the Developmental Center's "accreditation" N.D.C.C. ? 25-02-01.1, 25-04-02.1. Maintenance in this context is not limited to the institution's physical plant but would include any aspect of the institution's operation relevant to accreditation. Interpreting "general maintenance" expansively in N.D.C.C. ? 25-01-10 is consistent with the use of the word "maintenance" in N.D.C.C. ?? 25-02-01.1 and 25-04-02.1.

It is therefore my opinion that donations received by the State Hospital or the Developmental Center without limiting terms or conditions may be used for any purpose reasonably related to the institution, including not only the upkeep and repair of the institution's physical plant but also including any purpose reasonably related to the institution's mission.

Sincerely,

Mike Schwindt, Director
November 5, 1993
Page 5

Heidi Heitkamp
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