

LETTER OPINION
94-L-203

August 11, 1994

Mr. Doug Mattson
Ward County State's Attorney
Ward County Courthouse
Minot, ND 58701

Dear Mr. Mattson:

Thank you for your letter concerning the duties of a state's attorney in the enforcement of spousal support orders.

Among other duties, a state's attorney is required to "[a]ssist the district court in behalf of the recipient of payments for child support or spousal support combined with child support in all proceedings instituted to enforce compliance with a decree or order of the court requiring such payments." N.D.C.C. ? 11-16-01 (15). In 1993, the Legislature enacted N.D.C.C. ? 14-05-25.2, which provides:

Enforcement of support order. Any order for judgment for the support of a spouse or former spouse entered under this chapter may be enforced by any means permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. 659] and not forbidden under title 32. Any such order or judgment may also be enforced in any manner provided for the enforcement of an order for the payment of child support under chapter 14-09 to the fullest extent permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. 659]. For purposes of enforcement under chapter 14-09, the order for support of a spouse or former spouse must be treated as though it were an order for child support.

Your question may be restated as asking whether the treatment and enforcement of spousal support orders in the same manner as child support is enforced under N.D.C.C. ch. 14-09 requires state's attorneys to assist the district court on behalf of spousal support recipients.

When construing a statute, the intent of the legislature must be ascertained. Kadmas, Lee & Jackson, P.C. v. Bolken, 508 N.W.2d 341. 344 (N.D. 1993) . A statute must be considered as a whole to determine the intent of the Legislature. In Interest of Nyflor, 340 N.W.2d 178 (N.D. 1983). The Legislature's intent must be sought initially from the statutory language. County of Stutsman v. State

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Historical Soc'y, 371 N.W.2d 321, 325 (N.D. 1985). Furthermore, when words used in a statute are not defined they are to be given their plain, ordinary, and commonly understood meaning. N.D.C.C. ? 1-02-02.

N.D.C.C. ? 14-05-25.2 allows the enforcement of an order for support of a spouse or former spouse in any manner provided for the enforcement of an order for the payment of child support under N.D.C.C. ch. 14-09. It also states that for purposes of such enforcement, an order for spousal support must be treated as through it was an order for child support. "Enforce" means to compel observance of or obedience to, to compel, or to give force, to reinforce. The American Heritage Dictionary, 454 (2d coll. ed. 1991). The plain meaning of these provisions is to allow the means by which child support orders are enforced to be used to enforce spousal support orders.

N.D.C.C. ? 14-05-25.2 was enacted as part of House Bill 1427 by the 1993 Legislature.¹ 1993 N.D. Sess. Laws ch. 146. The legislative history demonstrates that this bill was intended to allow social security benefits to be subject to income withholding as a means of enforcing state spousal support orders. Hearing on H. 1427 Before the House Judiciary Committee, 53rd N.D. Leg. (January 26, 1993), Hearing on H. 1427 before the Senate Judiciary Committee, 53rd N.D. Leg. (March 2, 1993). The reference to the social security act specifically links state enforcement of spousal support to a federal law enabling money owed to individuals by the federal government to be subject to state orders for payment of child support or alimony. 42 U.S.C.A. 659; see also Meadows v. Meadows, 619 P.2d 598 (Okla. 1980). Therefore, the legal means of enforcing child support orders under N.D.C.C. ch. 14-09 are available for enforcement of spousal support orders as well.

N.D.C.C. ch. 14-09 provides measures for the enforcement of child support orders, but does not address the question of whether the district court or any beneficiary of a district court's order may obtain legal assistance from a county state's attorney when attempting to enforce this order.² Although N.D.C.C. ch. 14-09

¹This legislation addressed spousal support for both divorce actions and separation actions. See 1993 N.D. Sess. Laws ch. 246 1, 2.

²The principal means of enforcement is through an income

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contains a provision permitting the public authority³ or a child support agency to employ or contract with a licensed attorney to represent the interests of the people of the state of North Dakota in the enforcement of child support obligations, see N.D.C.C. ? 14-09-09.27, nothing in N.D.C.C. ch. 14-09 requires that state's attorneys assist the district court by providing legal services to obtain such enforcement.

It is therefore my opinion that N.D.C.C. ? 14-05-25.2 was enacted to permit spousal support orders to be enforced by the same means that child support orders are enforced under N.D.C.C. ch. 14-09. This legislation did not create any duty upon a state's attorney to assist the district court in enforcing such an order under N.D.C.C. ? 11-16-01(15).

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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withholding order. N.D.C.C. 14-09-09.24.

³Defined as the Department of Human Services. N.D.C.C. 14-09-09.10(10).