

**LETTER OPINION
2001-L-35**

September 13, 2001

Mr. Bob Gruman
North Dakota Development Fund
1833 East Bismarck Expressway
Bismarck, ND 58504-6708

Dear Mr. Gruman:

Thank you for your letter asking several questions about N.D.C.C. § 54-34.3-13, the rural growth incentive program. That section provides as follows:

1. The department shall manage and administer the rural growth incentive program. A city with a population of less than two thousand five hundred may apply to the department to be designated as a rural growth incentive city. The department shall designate an applicant city as a rural growth incentive city if the city raises funds in the amount of a dollar for dollar match for the amount requested in the loan, prepares an economic development strategic plan, and meets any additional program requirements provided by rule. The source of city funds may be any combination of public and private funds.
2. If the department designates a city as a rural growth incentive city:
 - a. Subject to the availability of funds, the state shall make a loan to the city in an amount not less than twenty-five thousand dollars and not more than seventy-five thousand dollars. The department shall establish the amount of the interest rate for loans provided to a city under this section. The funding source of the state loan is the North Dakota development fund. The city shall distribute the city and state funds to qualifying new or expanded primary sector businesses in the city. A qualifying business in the city includes a business that provides essential services to the city. For purposes of this section, a business that provides essential services does not include a public utility. The governing body of the city determines whether a new or expanded primary sector business qualifies for funding, and the director of the department determines whether a

business that provides essential services to the city qualifies for funding. The state shall distribute a loan to a rural growth incentive city once the city establishes the city has chosen a specified qualified business to receive funding. The city may not use city or state funds raised or provided under this section for costs associated with administering the rural growth incentive city.

- b. The department shall provide the city with training to assist the city in expanding primary sector businesses and working with state economic development programs.

The North Dakota Supreme Court has stated:

In construing a statute, our duty is to ascertain the intent of the legislature. To ascertain the legislative intent, we look first to the language of the statute as a whole. We construe a statute's words in their plain, ordinary and commonly understood sense.

Anderson v. Anderson by and through Anderson, 591 N.W.2d 138, 139 (N.D. 1999) (internal citations omitted).

You ask if the section calls for a direct loan to a city and if the loan is a general obligation of the city. Section 54-34.3-13(2)(a), N.D.C.C., provides that, subject to the availability of funds, "the state shall make a loan to the city." The statute's plain words call for a direct loan to a qualifying city. There is no language in the statute calling upon a city to pledge any amount of money for the exclusive repayment of a loan under the section nor to obligate its general taxing powers for purposes of repaying a loan under the section. It is therefore my opinion that N.D.C.C. § 54-34.3-13 calls for a direct loan to a qualifying city and that the loan does not become a general obligation of the city. See Haugland v. City of Bismarck, 429 N.W.2d 449 (N.D. 1988).

You ask if a city's source of matching funds could include funds from other state or federal agencies. Section 54-34.3-13(1), N.D.C.C., calls for your department to designate an applicant city as a rural growth incentive city if the city raises funds in the amount of a dollar for dollar match for the amount requested in the loan. This section provides that "[t]he source of city funds may be any combination of public and private funds." The word "any" means one or some, regardless of kind, quantity, or number. The American Heritage Dictionary 117 (2d coll. ed. 1991). It is therefore my opinion that an applicant city may select any combination of public and private funds available to it that it is authorized to spend for the purposes of the section in order to provide the dollar for dollar match required by this section. Some funding sources available to a city may have separate

restrictions on the use of the funds imposed by law, rule, or policy. Section 54-34.3-13 does not override those other restrictions.

You ask if a city can receive more than one loan under N.D.C.C. §54-34.3-13. The section qualifies a city as a rural growth incentive city, for a loan within the dollar amounts provided, if the city raises funds for the dollar for dollar match, prepares an economic development strategic plan, and meets any additional program requirements provided by rule. The section also provides that “[t]he department shall establish the amount of the interest rate for loans provided to a city under this section.” N.D.C.C. § 54-34.3-13(2)(a). (Emphasis added.) The use of the plural “loans” in this sentence could be interpreted as referring to the fact the department will be providing loans to more than one city under N.D.C.C. §54-34.3-13, or could be interpreted as authorizing the department to issue more than one loan to each rural growth incentive city. The statute is ambiguous on the number of loans a city may receive under the section.

Statutes are to be interpreted to give meaning to every part. County of Stutsman v. State Historical Society, 371 N.W.2d 321, 325 (N.D. 1985). The first sentence in N.D.C.C. § 54-34.3-13(2)(a) provides that the amount of a loan made under that section must be at least twenty-five thousand dollars and not more than seventy-five thousand dollars. The loan cap in this sentence would be rendered meaningless if a city could receive multiple loans totaling more than seventy-five thousand dollars. Therefore, it is my opinion that each rural growth incentive city is eligible for only one loan under N.D.C.C. § 54-34.3-13. The department’s rules may establish additional program requirements regarding the loans issued under that section.¹

Your final question is whether I have an opinion on what constitutes “essential services” under the section. Though not defined for purposes of N.D.C.C. § 54-34.3-13, that term is used in the section to describe businesses that may qualify for the distribution of loan funds by the city that receives them under the rural growth incentive program. Due to the absence of a definition, the intended meaning of the term is ambiguous and resort to extrinsic aids to interpretation is appropriate. N.D.C.C. § 1-02-39.

Legislative history on N.D.C.C. § 54-34.3-13 (2001 H.B. 1400) may assist you in defining the term for carrying out your responsibility to determine qualifying businesses under N.D.C.C. § 54-34.3-13(2)(a). For example, the minutes of the committee hearing paraphrase the testimony of the prime sponsor of the bill as follows:

This will be an additional underwriting criteria under the rural development fund. I want to point out that the committee should look closely at the

¹ The department is not required to use the rule-making process in N.D.C.C. ch. 28-32 because it is exempt under N.D.C.C. § 28-32-01(2)(e).

language in page 2, line 4, where “essential services” was added. This is a very broad term and ED&F will decide what it is.

Hearing on H.B. 1400 Before the Senate Comm. on Industry, Business, and Labor 2001 N.D. Leg. (Mar. 7) (Testimony of Rep. Berg).

At the same committee hearing, in response to a question asking “[h]ow do you define ‘essential services,’” the minutes summarize the prime sponsor’s response as:

I fought that. Don’t know if the code defines it. I am a strong believer we should be funding primary sector. Say a community needs a dentist or health services, that may be it. I don’t look at retail as “essential services”, this may open a can of worms. If something prevents primary sector from accomplishing its goals then that might be considered an essential service.

Hearing on H.B. 1400 Before the Senate Comm. on Industry, Business, and Labor 2001 N.D. Leg. (Mar. 7) (Testimony of Rep. Berg).

The minutes of the same committee meeting summarize a number of related comments from other committee members and witnesses:

Don’t object to “essential services” since it will be determined by the director of the department what they are. I encourage the committee to leave this language in place and urge do pass.

Hearing on H.B. 1400 Before the Senate Comm. on Industry, Business, and Labor 2001 N.D. Leg. (Mar. 7) (Testimony of Sen. Trenbeath).

We struggled with the “essential services” issue and encourage committee to keep it because it really comes down to a local decision. This issue best sorted out at the local level instead of mandating what is an essential service.

Hearing on H.B. 1400 Before the Senate Comm. on Industry, Business, and Labor 2001 N.D. Leg. (Mar. 7) (Testimony of Bill Shalhoob).

“Essential services” is important part of the bill because there isn’t a small city that isn’t struggling to keep fire department, ambulance service and the like solvent.

Hearing on H.B. 1400 Before the Senate Comm. on Industry, Business, and Labor 2001 N.D. Leg. (Mar. 7) (Testimony of Sen. Every).

LETTER OPINION 2001-L-35
September 13, 2001
Page 5

It is difficult to define "essential services" that may vary from one community to another. The idea of this bill is to give another option.

Hearing on H.B. 1400 Before the Senate Comm. on Industry, Business, and Labor 2001
N.D. Leg. (Mar. 7) (Testimony of Connie Sprynczynatyk, League of Cities).

In addition to the dictionary definition of "essential," you may use the above discussion to assist you in defining the term. Your program rules may be a convenient place to set out the criteria.

Sincerely,

Wayne Stenehjem
Attorney General

rel/pg