

**LETTER OPINION**  
**2000-L-42**

March 31, 2000

Honorable Gary J. Nelson  
State Senator  
Chairman, Legislative Council  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Senator Nelson:

Thank you for your letter asking for clarification of the opinion I issued last fall to Agriculture Commissioner Roger Johnson regarding the Minor Use Pesticide Fund.

N.D.C.C. § 4-35-06.3, as amended in 1999, provides:

The minor use pesticide fund is created as a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the pesticide control board for the purpose of conducting or commissioning studies, investigations, and evaluations regarding the registration and use of pesticides for minor crops, minor uses, and ~~emergency uses~~ other uses as determined by the board.

(The overstruck and underlined language reflects the 1999 amendments.) See 1999 N.D. Sess. Laws ch. 31, § 3. In my opinion to Commissioner Johnson, I concluded that the .5 FTE position which was added to 1999 Senate Bill 2009 for "minor use product registration activities" could not be used to work on Canada-U.S. pesticide harmonization. 1999 N.D. Op. Att'y Gen. L-94 (Oct. 19 to Roger Johnson).

Your letter asks the additional question whether "the minor use pesticide fund may be used by the Pesticide Control Board to contract with private individuals or groups to address pesticide harmonization issues." Although the earlier opinion concluded that the Minor Use Pesticide Fund could not be used to hire personnel to work on pesticide harmonization, the opinion was mainly addressed to the position added to Senate Bill 2009 and therefore does not control the broader question you have asked regarding the Fund.

My earlier opinion did not discuss the meaning of harmonization. Its meaning has some relevance if the Pesticide Control Board is to determine how it may grant requests for Minor Use funds. Harmonization is not defined in N.D.C.C. ch. 4-35 or Senate Bill 2009. In fact, "harmonization" is only referenced twice in Senate Bill 2009,

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appearing only in the crop harmonization committee's name. Words in a statute are to be given their plain, ordinary, and commonly understood meanings unless specifically defined in the Century Code. Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990); N.D.C.C. § 1-02-02. In the dictionary, "harmonize" means "to bring into agreement or harmony" or "to be in or come into agreement." The American Heritage College Dictionary, 620 (3rd ed. 1997). While this definition is not overly informative, neither are the six enumerated purposes for the committee in section 11 of Senate Bill 2009 as far as defining "harmonization." Therefore, it is appropriate to review the legislative history to uncover its meaning.

During the House Appropriations Committee hearings on Senate Bill 2009, Representative Edward Lloyd described the purpose of section 11 as promoting and developing

registration and prioritization principally of crop materials, protection materials that were currently either used in Canada or the United States which would assist North Dakota farmers in being more competitive as far as their farming activities are concerned . . . That fits with dual labeling that's been discussed, where by Canada has a label on a product that the United States doesn't currently have and it's been deemed that the product would benefit our farmers and the Commissioner could then create a label to use for the purpose of relabeling materials in Canada that could be brought across the border and used in North Dakota.

Hearing on S. 2009 Before the Senate Approp. Comm. 56th N.D. Leg. (April 7, 1999) (committee minutes). Senator Ken Solberg indicated that the harmonization committee would work with the "EPA, ND industries, Canadian officials, etc." for harmonization of chemicals. Id. (April 10, 1999). Senator L. L. Naaden, in discussing section 11, discussed means for allowing North Dakota farmers "to be able to bring in chemicals from Canada for dual labeling." Id. (April 12, 1999). Against this backdrop of harmonization discussions, it must be understood that whatever the intended meaning of harmonization, the crop harmonization committee is still limited to those five duties enumerated in section 11 on Senate Bill 2009.

My earlier opinion also struggled with overall interpretation of N.D.C.C. § 4-35-06.3 regarding the purpose of the Fund. To summarize, applying the rule of ejusdem generis ("of the same kind"), I broke down the provisions of that section as follows:

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All moneys in the fund are appropriated . . . for the purpose of:

- 1) Conducting or commissioning studies, investigations, and evaluations
- 2) Regarding the registration and use of pesticides
- 3) For a) minor crops, b) minor uses, and c) other uses as determined by the board.

A proposed expenditure from the Minor Use Pesticide Fund must satisfy these conditions to be authorized.

Canada-U.S. pesticide harmonization generally involves making the same pesticides equally available to farmers in this country as are available to farmers in Canada and at comparable prices. Commissioning a study, investigation, or evaluation of pesticides which currently are more available in Canada than the United States would easily satisfy the first two conditions in N.D.C.C. § 4-35-06.3. Thus, if a particular pesticide is being studied, investigated, or evaluated for registration and use on minor crops or for minor uses, the Pesticide Control Board could use the Fund to contract for that purpose.

However, I understand that harmonization concerns frequently arise regarding a pesticide that would be used on crops that are widely grown in this state, rather than for "minor crops" or "minor uses." The question thus becomes whether a study, investigation, or evaluation of a pesticide for a major crop or a major use can be considered an "other use as determined by the board" under N.D.C.C. § 4-35-06.3.

As discussed in my earlier opinion, the legislative conference committee discussed at some length the interaction of the Pesticide Control Board and pesticide harmonization efforts. Apparently, there was some disagreement among the members of the committee on whether the Board was authorized to pursue pesticide harmonization efforts. Although this legislative history does not directly answer your question, the result of the 1999 legislative process was an amendment that adopted the open-ended authority of the Board to determine "other uses" for pesticides that may warrant funding. The plain language of the 1999 amendment authorizes the Board, in its discretion, to add "major crops" to the list of potential uses of pesticides which may be studied, investigated, or evaluated under N.D.C.C. § 4-35-06.3. Therefore, it is my opinion that the Minor Use Pesticide Fund, despite its descriptive name, may be used to fund harmonization research on the use of pesticides for major crops or major uses, in addition to

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minor crops and minor uses. Granting of such funds, however, remains subject to the Board's discretion.

In exercising its discretion, the Board is limited to funding studies, investigations, and evaluations. In my opinion, this authority is limited to research and other fact-finding efforts relative to pesticide registration and use. It would not include non-research efforts such as persuading legislators or regulators to change current law or regulations on the registration and use of pesticides.

Sincerely,

Heidi Heitkamp  
Attorney General

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