

LETTER OPINION
2003-L-52

November 18, 2003

Dr. Wayne G. Sanstead
Superintendent
Department of Public Instruction
600 E Boulevard Ave Dept 201
Bismarck, ND 58505-0440

Dear Dr. Sanstead:

Thank you for your letter requesting my opinion regarding section 8 of House Bill No. 1489 ("H.B. 1489"). See 2003 N.D. Sess. Laws ch. 157, § 8. House Bill 1489 primarily amends N.D.C.C. ch. 15.1-18, relating to teacher qualification requirements. The majority of the bill does not take effect until after June 30, 2006; however, the section that triggered your letter is in effect now. This section states:

SECTION 8. TEACHER QUALIFICATIONS – ACCREDITATION RULES – DIRECTIVES. For purposes of accreditation, the superintendent of public instruction may not establish teacher qualification requirements that exceed those established by the education standards and practices board.

2003 N.D. Sess. Laws ch. 157, § 8.

The Superintendent of Public Instruction ("Superintendent") has the authority to adopt rules governing the accreditation of public and nonpublic schools. N.D.C.C. § 15.1-02-11. Under this authority, the Superintendent adopted N.D.A.C. ch. 67-19-01. To be accredited under this chapter, a school must meet the standards and criteria set by the Superintendent in a variety of areas, such as subjects taught; length of the school year; compliance with all municipal and state health, fire, and safety laws; and teacher qualification requirements to teach certain subjects at certain grade levels. See generally, N.D.A.C. ch. 67-19-01¹.

¹ Each of these sections lists N.D.C.C. § 15-21-04.1 as its "general authority" to adopt its respective rule. In 1999, this section was repealed as part of the education title

You first ask whether N.D.A.C. ch. 67-19-01 establishes accreditation qualifications for schools or for teachers. Your letter states that if the teacher qualifications in N.D.A.C. ch. 67-19-01 apply to schools, no further advice is needed. The implication is that you believe you may use the teacher qualifications, as currently set out in your administrative rules, as part of your determination to accredit schools; I do not believe this to be true.

The teacher qualifications to teach certain subjects at certain grade levels contained in N.D.A.C. ch. 67-19-01 are used by the Department of Public Instruction ("DPI") to accredit schools. House Bill 1489 specifically states that for "purposes of accreditation" teacher qualification requirements cannot exceed those established by the education standards and practices board ("ESPB"). 2003 N.D. Sess. Laws ch. 157, §8. See N.D.A.C. §§ 67-19-01-24 through 67-19-01-29. While the ESPB has set criteria for teacher licensure and minor equivalencies, it has not established teacher qualification requirements to teach certain subjects at certain grade levels. Thus, Section 8 of H.B. 1489 is ambiguous and of doubtful meaning.

When construing a statute, the object is to ascertain the intent of the Legislature. See State v. Rambosek, 479 N.W. 2d 832, 834 (N.D. 1992). If a statute's language is ambiguous or of doubtful meaning, extrinsic aids, including legislative history, may be considered to ascertain the Legislature's intent. N.D.C.C. § 1-02-39-(3).

On January 8, 2002, the federal No Child Left Behind Act of 2001 ("NCLB") was signed into law. See generally, 20 U.S.C. 6301 et seq., P.L. 107-110, 2002 HR 1. This act requires, in part, that a qualified teacher must teach all classes. Id. In an effort to comply with the requirements of this act, ESPB drafted and supported H.B. 1489. Hearing on H.B. 1489 Before the Senate Education Comm., 2003 N.D. Leg. (Mar 18) (testimony of Representative R. Kelsch and testimony of Janet Placek Welk, ESPB's Executive Director).

Prior to the introduction of H.B 1489, DPI had introduced a bill that the Legislature felt went "far beyond what was required" by NCLB. Id. The Legislature expressed concern that even though DPI's bill did not pass, DPI could still require teachers to exceed the NCLB requirements through the school accreditation process. See generally, Hearing on H.B. 1489 Before the Senate Education Comm., 2003 N.D. Leg. (Apr. 15). In response to this concern, amendment 30634.0307, which later became Section 8 of H.B. 1489, was introduced. See, Hearing on H.B. 1489 Before the Conference Committee, 2003 N.D. Leg. (Apr. 17). This amendment was explained as follows:

revision; however, a substantially similar section was enacted. See N.D.C.C. § 15.1-02-11.

Rep. Haas the second amendment before us is 30634.0307, this amendment has to do with a reconciling accreditation requirements for teacher qualifications as established by ESPB. ... I am really questioning whether or not there should be a difference between what the Department of Public Instruction requires for accreditation purposes with regards to teacher qualifications and what those qualification standards that are established by ESPB. ... [M]y contention is and I would like response to it, since we have raised the teacher qualification standards considerably, because of NCLB [No Child Left Behind Act] through ESPB, that we should be able to live with the same standard of teacher qualification for ALL phases of accreditation and approval levels. ... So the minimum requirements right now if we pass this bill without this amendment would be the criteria established in this [H.B.] 1489. The question is whether we want to allow Department of Public Instruction to go beyond that for accreditation purposes.

[Sen.] Christenson: My feeling is that at this juncture we can't afford to send mixed messages. And I think if that were to happen it would jus [sic] create more confusion and more upheaval. Certainly at this point and with this bill, we should put in this amendment.

See Hearing on H.B. 1489 Before the Conference Committee, 2003 N.D. Leg. (Apr. 17) (statements of Rep. Haas and Sen. Christenson) (emphasis added).

Thus, the Legislature intended that DPI not go beyond the criteria established in H.B. 1489. House Bill 1489 primarily amends N.D.C.C. ch. 15.1-18. As such, the legislative intent was that, for the purposes of accreditation, the Superintendent may not set teacher qualification requirements that exceed the requirements established by N.D.C.C. ch. 15.1-18, or the requirements established by the ESPB in accordance with N.D.C.C. ch. 15.1-18. See 2003 N.D. Sess. Laws ch. 157, § 8.

It is important to note that the teacher qualification requirements set out in N.D.C.C. ch. 15.1-18 generally require a teacher to be licensed or approved by the ESPB; this is true for the qualifications that are currently in effect, as well as those that will not go into effect until after June 30, 2006. The Legislature gave the ESPB the authority to set criteria for licensure in N.D.C.C. §§ 15.1-13-08(1), 15.1-13-09 and 15.1-13-10(1). The criteria must include considerations of character, adequate educational preparation, and general fitness to teach. N.D.C.C. § 15.1-13-10. Therefore, while the Superintendent has full authority to accredit schools, and is free to set teacher qualifications as a part of the accreditation requirements, the requirements relating to teacher qualifications cannot be set higher than those established by N.C.C.C. ch. 15.1-18, or the requirements established by the ESPB in accordance with N.D.C.C. § 15.1-18.

Your second question is whether the current teacher qualification requirements in N.D.A.C. ch. 67-19-01 exceed those established by N.D.C.C. ch. 15.1-18, or the requirements established by the ESPB in accordance with N.D.C.C. ch. 15.1-18. Since the qualifications in N.D.A.C. ch. 67-19-01 are quite extensive this question is best answered on a case-by-case basis with assistance from your legal counsel from this office.

Your third question is, in effect, whether your rules regarding teacher qualifications for accreditation purposes are still in force. Administrative rules may not exceed statutory authorization. N.D.C.C. § 28-32-02; N.D.A.G. 2003-L-44. Since the underlying authority to establish teacher qualifications has been limited by this bill, the teacher qualification requirements are ineffective as of August 1, 2003,² to the extent that they exceed those established by N.D.C.C. ch. 15.1-18, or the requirements established by the ESPB in accordance with N.D.C.C. ch. 15.1-18.

In order that your rules accurately reflect current law, I encourage you to review the administrative rules and amend or repeal those rules that, for accreditation purposes, establish teacher qualification requirements that exceed those established by N.D.C.C. ch. 15.1-18, or the requirements established by the ESPB in accordance with N.D.C.C. ch. 15.1-18.

Your final question requests a determination of the areas in which the DPI may set accreditation requirements so that schools may receive their full foundation aid payments. See generally, N.D.C.C. §§ 15.1-27-08 and 15.1-27-09. It is my opinion that DPI may continue to establish accreditation requirements in the same areas it currently does except that the teacher qualification requirements cannot be set higher than those established by N.D.C.C. ch. 15.1-18, or the requirements established by the ESPB in accordance with N.D.C.C. ch. 15.1-18. See N.D.C.C. § 15.1-02-11 and 2003 N.D. Sess. Laws ch. 157, § 8. While H.B. 1489 may have limited the scope of the “teacher qualifications” criteria for purposes of school accreditation, it did not remove the Superintendent’s duty to accredit schools.

Sincerely,

Wayne Stenehjem
Attorney General

njl/vkk

² August 1, 2003 is the effective date of section 8 of H.B. No. 1489.