

**LETTER OPINION
2006-L-02**

January 4, 2006

The Honorable Ole Aarsvold
House of Representatives
Route 2, Box 12
Blanchard, ND 58009-9513

Dear Representative Aarsvold:

Thank you for your letter requesting my opinion on several issues related to how House Bill No. 1264, 2005 N.D. Leg. (HB 1264), affects terms of members of the State Board of Agricultural Research and Education (Board). It is my opinion that Board members appointed before the August 1, 2005, effective date of HB 1264 are eligible for reappointment to one additional term of four years upon the expiration of their initial five-year term. It is my further opinion that a person who is initially appointed to fill a vacancy is eligible for appointment to two full four-year terms after expiration of the remainder of the term for which the individual is first appointed.

ANALYSIS

House Bill 1264, effective August 1, 2005, amended N.D.C.C. § 4-05.1-16 relating to terms of members of the Board.¹ Prior to those amendments, the term of office was five years and a member could not be reappointed to a second five-year term.² Now the term of office is four years and reappointment to a second four-year term is permitted.³

You state that two appointments were made to the Board effective July 1, 2005, under the statute in effect on that date. On July 1, 2005, N.D.C.C. § 4-05.1-16 provided for five-year terms. Absent constitutional restrictions on doing so, the Legislative Assembly may shorten the term of an office created by the Legislative Assembly, but only if the intent to so change the term is clearly expressed.⁴ There is nothing in HB 1264

¹ 2005 N.D. Sess. Laws ch. 59, § 1.

² See HB 1264.

³ N.D.C.C. § 4-05.1-16(3) ("At the completion of each initial term, the term of office for each member is four years, beginning on July first. An individual may be reappointed to a second four-year term.").

⁴ State ex rel. Stutsman v. Light, 281 N.W. 777, 778-79 (N.D. 1938).

indicating an intent to shorten the term of office of Board members appointed prior to August 1, 2005. Accordingly, the term of office of the two members appointed on July 1, 2005, is five years.

You ask whether Board members appointed on July 1, 2005, before the August 1, 2005, effective date, are eligible for reappointment to a second term, which would be for four years, after their initial five-year term expires.

When the wording of a statute is clear and unambiguous, the legislative intent is presumed clear from the plain language in the statute. However, if the statutory language is ambiguous or of doubtful meaning, courts may look to extrinsic aids to interpret the statute.⁵

The relevant portion of N.D.C.C. § 4-05.1-16 provides:

2. a. The initial five members appointed by the ag coalition shall select their terms by lot so that one member serves for one year, one member serves for two years, one member serves for three years, one member serves for four years, and one member serves for five years.
- b. The initial five members appointed by the extension service's multicounty program units shall select their terms by lot so that one member serves for one year, one member serves for two years, one member serves for three years, one member serves for four years, and one member serves for five years.
3. At the completion of each initial term, the term of office for each member is four years, beginning on July first. An individual may be reappointed to a second four-year term.⁶

For a member appointed prior to August 1, 2005, to a term of five years, it is possible to construe N.D.C.C. § 4-05.1-16 to permit reappointment to a first and then a second four-year term after the initial five-year term expires. To reach this result, one must construe the phrase "initial term" in subsection 3 to mean the five-year term of a member first appointed on July 1, 2005. On the other hand, if the reference to "initial term" in subsection 3 means the initial term of a member of a Board appointed to a staggered term when the Board was first established in 1997, a member appointed to a

⁵ District One Republican Comm'n v. District One Democrat Comm'n, 466 N.W.2d 820, 824-25 (N.D. 1991).

⁶ N.D.C.C. § 4-05.1-16(2), (3).

five-year term on July 1, 2005, is eligible for only one additional term of four years following the expiration of the five-year term.⁷

Subsection 3 immediately follows language in subsection 2 that refers to the “initial” ten appointed Board members, and which establishes a process for determining staggered terms for each of those members.⁸ The obvious intent of subsection 3 in the legislation enacted in 1997 was to permit appointment to one five-year term following completion of an “initial” term, ranging from one to five years in length, and to prohibit reappointment to a second five-year term. Likewise, considering this historical context, it seems obvious the intent of amended subsection 3 is to permit just one reappointment (to a term of four years) following completion of a first full term.

The legislative history of HB 1264 supports this interpretation. According to one of the bill’s sponsors, HB 1264 “allows reappointment for a second term should the appointing entity choose to do so.”⁹ Members of the Board thought that “an additional term will allow for the good leadership of young people who demonstrate competency and under the current law might not get a chance to lead the board.”¹⁰

Clearly, the intent of this change is to permit a second term so new members have an opportunity to become familiar with Board operations during a first term and then assume leadership positions during a second term. This opportunity was afforded (to varying degrees) to members appointed in 1997 because those members could complete their initial term (ranging from one to five years) and then be eligible for appointment to a subsequent five-year term. Amendments made by HB 1264 were required in order to permit this same opportunity to new Board members appointed to replace the “initial” members. However, there is nothing in the legislative history to suggest a third term is permitted those members appointed to a five year term on July 1, 2005; that history shows an intent to establish a two-term limit. The statute itself provides that “[a]n individual may be reappointed to a second four-year term,” implying that a member may not be reappointed more than that. Accordingly, it is my opinion that Board members appointed before the August 1, 2005, effective date are eligible for

⁷ The board was established in 1997 N.D. Sess. Laws ch. 50, § 21. As codified in subsection 2 of N.D.C.C. § 4-05.1-16, the legislation provided for staggered “initial” terms ranging from one to five years, determined by lot. Under the 1997 legislation, a member could complete the “initial” term of between one and five years and then be eligible for reappointment to a subsequent term of five years.

⁸ N.D.C.C. § 4-05.1-16.

⁹ Hearing on H.B. 1264 Before the Senate Comm. On Agriculture, 2005 N.D. Leg. (Feb. 24) (Statement of Rep. Aarsvold).

¹⁰ Id.

reappointment to one additional term of four years upon the expiration of their initial five-year term.

Your final question asks whether a person appointed to fill a vacancy and serve the remainder of an unexpired term may be reappointed to serve two full four-year terms. Subsection 5 of N.D.C.C. § 4-05.1-16 states, “[a]n individual appointed under this subsection is eligible to serve two full terms after completing the unexpired term for which the individual was appointed.” Accordingly, it is my opinion that a person who was initially appointed to fill a vacancy is eligible for appointment to two full four-year terms after expiration of the remainder of the term for which the individual was first appointed.

Sincerely,

Wayne Stenehjem
Attorney General

hps/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹¹

¹¹ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).