

LETTER OPINION
96-L-180

October 4, 1996

Mr. Gerald A. Kuhn
Logan County State's Attorney
PO Box 50
Napoleon, ND 58561

Dear Mr. Kuhn:

Thank you for your letter asking about limitations on a school district's authority to withdraw portions of its special reserve fund under N.D.C.C. ch. 57-19.

From a conversation you had with a member of my staff, it appears that the specific nature of your question is whether a school district with a special reserve fund may employ both subsections 1 and 2 of N.D.C.C. § 57-19-06 at or near the same time for pursuance of the same or separate expenditures.

As currently in effect, N.D.C.C. § 57-19-06 provides:

1. Whenever collections from the taxes levied for the current budget are insufficient to meet the requirements of the budget for teacher salaries, heat, light, and fuel, a majority of the governing body of the school district, by resolution, may provide for the issuance of vouchers directed to the county treasurer, drawing on funds in the special reserve fund of the district. The voucher may be substantially in the same form as a warrant, but may not be a negotiable instrument, and must direct the county treasurer to pay over to the school district from the special reserve fund the amount of money specified in the voucher. Subject to the limitations in section 57-19-07, the county treasurer shall transfer from the special reserve fund to the school district general fund the sum so specified, and shall enter the voucher in a book to be known as the special reserve fund voucher register in the order in which they are issued.

2. The governing body of the school district, by resolution, may withdraw without repayment fifty

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percent of the funds from the special reserve fund of the school district.

N.D.C.C. § 57-19-06 (effective until June 30, 1997, pursuant to 1993 N.D. Sess. Laws ch. 3, § 26).

"Generally, the law is what the Legislature says, not what is unsaid." Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993). "It must be presumed that the Legislature intended all that it said, and that it said all that it intended to say." City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940). Concerning statutory construction, our Supreme Court has stated:

Our primary goal in construing a statute is to discover the intent of the legislature. Burlington Northern v. State, 500 N.W.2d 615 (N.D. 1993). We look first to the language of the statute in seeking to find legislative intent. Rocky Mountain Oil & Gas Ass'n v. Conrad, 405 N.W.2d 279 (N.D. 1987). If a statute's language is clear and unambiguous, the legislative intent is presumed clear on the face of the statute. Western Gas Resources, Inc. v. Heitkamp, 489 N.W.2d 869 (N.D. 1992), cert. denied, 507 U.S. 920, 113 S.Ct. 1281, 122 L.Ed.2d 675 (1993).

Northern X-Ray Co. v. State, 542 N.W.2d 733, 735 (N.D. 1996).

Subsection 2 was first enacted as 1989 N.D. Sess. Laws ch. 701. Its language has remained unchanged since that time through renewal of its temporary status by 1991 N.D. Sess. Laws ch. 656 and 1993 N.D. Sess. Laws ch. 3. The addition of subsection 2 to N.D.C.C. § 57-19-06 provides an additional method by which a school district with a special reserve fund may use it. The language of subsection 2 is additional to the language of subsection 1 and is not expressed as a mutually exclusive alternative to subsection 1. If the Legislature had intended that a school district be allowed to use only one of the types of authority contained in the two subsections to N.D.C.C. § 57-19-06, it would have so stated. "[S]ubsection 2 provides school boards with greater 'flexibility' in using special reserve funds because those withdrawals are not subject to the same conditions of use and repayment as vouchers under subsection 1." Reed v. Hillsboro Pub. Sch. Dist. No. 9, 477 N.W.2d 237, 241 (N.D. 1991).

It is my opinion, therefore, that a school district may employ both subsections of N.D.C.C. § 57-19-06 at or near the same time for pursuing the same or separate expenditures. When using the authority

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provided by subsection 2 of N.D.C.C. § 57-19-06, the district may withdraw 50% of the funds from the special reserve fund without repayment. When using the authority provided in subsection 1 of N.D.C.C. § 57-19-06, the district must limit the withdrawal of the special reserve fund balance to circumstances where its taxes levied for its current budget are not sufficient to meet the requirements of that budget for teacher salaries, heat, light, and fuel, and it must issue vouchers to the county treasurer for repayment. The amount of the special reserve fund which may be withdrawn with vouchers under subsection 1 is limited by N.D.C.C. § 57-19-07.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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