

LETTER OPINION
96-L-124

June 13, 1996

Mr. Robert J. Olheiser
Commissioner
State Land Department
PO Box 5523
Bismarck, ND 58506-5523

RE: Investment expenses

Dear Commissioner Olheiser:

Thank you for your May 16, 1996, letter in which you ask whether N.D.C.C. § 15-03-16 provides an independent appropriation to the Board of University and School Lands (Land Board) for the payment of the Land Board's investment expenses, or whether the statute is subject to the provisions of N.D.C.C. §§ 15-03-01.1 and 01.2.

Section 15-03-01.1 establishes the state lands maintenance fund and allocates to the fund 10% of the income derived from assets under the Land Board's control. Section 15-03-01.2 sets forth the uses of the fund, that is, "[a]ll salaries and expenses of the office of the commissioner of university and school lands must be paid from said state lands maintenance fund."

Section 15-03-16 gives to the Land Board a standing appropriation to pay for the Board's "investment management fees, trustee fees, consulting fees, and custodial fees. . . ." This appropriation is from "the fund for which the investment is made." Id.

You ask about the relationship between Section 15-03-01.2's requirement that all of the Board's expenses are to be paid out of the state lands maintenance fund, and Section 15-03-16's authorization that the Board's investment expenses be paid from a different source.

The Legislature has given the Land Board two separate sources to fund its activities. The Land Board may use the state lands maintenance fund to pay salaries and expenses. It receives a specific appropriation from the Legislature enabling it to use the fund. E.g., 1995 N.D. Sess. Laws ch. 15. In addition, the Land Board may use the standing appropriation of Section 15-03-16 to pay the investment expenses described in that section. These two funding sources are distinct. Other than the fact that they deal with the

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same general subject -- Land Board expenses -- neither is governed by or related to the other.

The "primary goal" of statutory interpretation is to give effect to legislative intent. Van Raden Homes, Inc. v. Dakota View Estates, 520 N.W.2d 866, 868 (N.D. 1994). See also County of Stutsman v. State Historical Society, 371 N.W.2d 312, 325 (N.D. 1985) (statutes must be construed so that all parts of a statute have meaning and effect). The Legislature has separated payment of the Land Board's investment expenses from all its other expenses. To conclude that the investment expenses listed in Section 15-03-16 must be paid out of the state lands maintenance fund would make Section 15-03-16 entirely irrelevant. This would violate the principle that the Legislature "is presumed to act with purpose and not perform useless acts." State v. Bielke, 489 N.W.2d 589, 592 (N.D. 1992).

The duty to harmonize statutes and avoid conflicts, id. at 593, requires the conclusion that the two funding sources are distinct and that the money appropriated pursuant to them is to be used for separate purposes. This conclusion is supported by the Land Board's interpretation of the statutes. I have been told by your staff that the state lands maintenance fund has never been used to pay the investment expenses named in Section 15-03-16, and that only Section 15-03-16 has been used to pay them. An agency's historical application of statutes it is charged to administer, is given great weight in correctly construing the statutes. Delorme v. North Dakota Dep't of Human Services, 492 N.W.2d 585, 587 (N.D. 1992); Horst v. Guy, 219 N.W.2d 153, 159 (N.D. 1974).

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

cmc