

N.D.A.G. Letter to Klundt (March 18, 1988)

March 18, 1988

Honorable Larry A. Klundt
State Representative
District 12
1720 Burnt Boat Drive
Bismarck, ND 58501

Dear Representative Klundt:

Thank you for your letter of December 7, 1987. I apologize for the delay in responding to your letter.

In your letter you request an opinion on two questions concerning the renewal or nonrenewal of a superintendent's multi-year contract. You first request an opinion as to whether, in a situation in which a superintendent has a multi-year contract, the extension of the contract under N.D.C.C. § 15-47-38.1(12) is a multi-year extension. Second, you ask for an opinion, again in a situation in which a superintendent has a multi-year contract, as to whether the contract is extended one year beyond the expiration of the multi-year contract if the school board fails to give notice during the first year of the contract of its intent to not renew the contract.

N.D.C.C. 15-47-38.1(12) provides:

15-47-38.1. Evaluation, renewal, or discharge of superintendents of school districts.

....

12. f a school district fails to provide notification to a superintendent in writing between March first and May first of each year that the school board intends not to renew the superintendent's contract, the district shall be deemed to have renewed the contract for a period of one year extending from the termination date set forth in the existing contract.

N.D.C.C. § 15-47-38.1(12) (emphasis supplied). The statute provides that absent proper notification that the school board does not intend to renew the superintendent's contract, the contract will be extended "for a period of one year extending from the termination date set forth in the existing contract." Id. In construing statutory provisions every word, clause, and sentence of a statute is to be given meaning and effect. Garner Pub. School Dist. No. 10 v. Golden Valley County Comm. for Reorg. of School Dists., 334 N.W.2d 665, 670 (N.D. 1983). Therefore, based upon the plain language of the statute, it is my opinion that

in a situation in which a superintendent has a multi-year contract, the extension of the contract under N.D.C.C. § 15-47-38.1(12) is a one-year extension, not a multi-year extension.

N.D.C.C. § 15-47-38.1 provides that a school district shall provide notification to a superintendent between certain dates "of each year that the school board intends not to renew the superintendent's contract." (Emphasis supplied.) You request an opinion as to whether this means that if a school board fails to give notice during the first year of a multi-year contract of its intent to not renew the contract, then the contract is extended.

"A statute must be considered as a whole to determine the intent of the Legislature." County of Stutsman v. State Historical Society of North Dakota, 371 N.W.2d 321, 325 (N.D. 1985). In addition to the provision concerning notification of the school board's intent not to renew the superintendent's contract, N.D.C.C. § 15-47-38.1 sets forth requirements for the discharge of a superintendent during the term of the contract. See N.D.C.C. 15-47-38.1(4) - (11).

Thus, the statute provides for two separate methods of terminating the contract of a superintendent: nonrenewal at the expiration of the term of the contract and discharge during the term of the contract. During the term of a multi-year contract, a school district could not decide to not renew the superintendent for year two or three of the contract; the school board could only discharge the superintendent for good and just causes. Notwithstanding the inclusion of the phrase "each year" in N.D.C.C. § 15-47-38.1(12), the presence of the provisions for discharge of a superintendent during the term of the contract indicates that the statute as a whole does not require nonrenewal notices until the end of the term of the contract.

In cases of multi-year contracts, the issue of nonrenewal arises only during the final year of the contract. N.D.C.C. § 15-47-38.1(12) is latently ambiguous because it does not clearly indicate whether, in a situation in which a superintendent has a multi-year contract, the term "each year" refers to the year in which the contract is to expire or every year during the term of the contract.

If a statute is ambiguous, resort may be had to extrinsic aids in order to ascertain legislative intent. St. Paul Mercury Ins. Co. v. Andrews, 321 N.W.2d 483, 485 (N.D. 1982); Hirsch v. Scherr, 295 N.W.2d 131, 134 (N.D. 1980). Among the extrinsic aids that may be considered in order to ascertain the Legislature's intent are the object sought to be obtained and the consequences of a particular construction. See 321 N.W.2d at 485; N.D.C.C. § 1-02-39(1), (5) (1987).

The object sought to be obtained by the Legislature in N.D.C.C. § 15-47-38.1(12) is to provide a superintendent under contract with a school district an assurance of continued employment if he or she does not otherwise receive timely notification of nonrenewal. In N.D.C.C. § 15-47-38.1(12), the Legislature recognizes the difficulty that a superintendent would face in securing reemployment if he or she were not timely notified that his or her contract would not be renewed. Obviously, a superintendent with a multi-year contract is

not presented with the problems of unemployment and reemployment until the final year of the contract. Also, requiring notification so early in the term of a multi-year contract probably would not give the school district adequate time to evaluate the superintendent's performance, which probably was a major factor in entering into a multi-year contract in the first place.

The consequences of construing the statute to require notification of intent not to renew during every year of the term of a multi-year contract would be to extend a three-year contract into a four-year contract when at the end of the first year of a three-year contract the school board did not notify the superintendent that it would not renew the contract in two years. There is no indication in the legislative history that the Legislature intended such a result from application of the statute.

Applying the principles of statutory construction, it is my opinion that N.D.C.C. § 15-47-38.1(12) does not require a school board to give notice during the first year of a multi-year contract that it intends to not renew the contract when it expires and that failure to give such notification during the first year of the contract does not extend the contract beyond the multi-year term set forth in the contract.

I hope this opinion is helpful to you. If you have any further questions on this matter, please feel free to contact me.

Sincerely,

Nicholas J. Spaeth

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