N.D.A.G. Letter to McClure (Dec. 23, 1992)

December 23, 1992

Brian McClure, Director
Central Personnel Division
State Capitol
600 E Boulevard Avenue
Bismarck, ND 58505-0120

Dear Mr. McClure:

Thank you for your December 9, 1992, letter asking whether 1991 N.D. Sess. Laws ch. 53 allows a permanent full-time employee to be paid a salary increase that begins later than July 1, 1992.

The provision of law in question provides:

> **SECTION 2. State employee salary increases - Effective date.** The amounts appropriated in section 1 of this Act are only to be available to state agencies and institutions beginning on July 1, 1992, to be paid beginning on August 1, 1992, or later, for employee compensation increases of forty dollars per month for each permanent full-time employee.

1991 N.D. Sess. Laws ch. 53, § 2.

The primary purpose of statutory construction is to ascertain the intent of the Legislature. Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694 (N.D. 1990). A statute is to be considered as a whole to determine the intent of the Legislature. The legislative intent must be sought initially from the statutory language itself. If the language of a statute is clear and unambiguous, the letter of the statute cannot be disregarded under the pretext of pursuing its spirit because the legislative intent is presumed clear from the face of the statute. County of Stutsman v. State Historical Society, 371 N.W.2d 321 (N.D. 1985).

In short, courts are guided by the common-sense principal that a statute is to be read to give effect to each of its provisions, whenever fairly possible. County of Stutsman, at 325. Where constitutional and statutory provisions are clear and unambiguous, it is improper for the courts toattempt to construe the provisions so as to legislate additional requirements or proscriptions which the words of the provision do not themselves provide. Haggard v. Meier, 368 N.W.2d 539 (N.D. 1985). Where the language of a statute is plain and unambiguous, the court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it. City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940).

The apparent intent from the face of the law in question is that "each permanent full-time employee" gets the salary increase in question. Language concerning the availability of appropriated funds for paying the raise indicates that those amounts are available to the agencies on July 1, 1992, to be paid on August 1, 1992, "or later." The "or later" language appears to relate to the timing of the availability of the funds in question, rather than the employees who are entitled to receive the raise.

North Dakota Administrative Code (N.D. Admin. Code) § 4-07-02-01(4) defines a "general salary increase" as meaning a salary increase provided to classified employees by specific legislative appropriation. N.D. Admin. Code § 4-07-02-07 provides, for the agencies to which it is applicable, that a general salary increase must be provided in accordance with any specific guidelines or requirements as appropriated by the Legislative Assembly. Even though the salary increase in question is not limited to classified employees, it is clear that administration of legislatively granted salary increases is to be performed pursuant to the guidelines provided by the Legislative Assembly.

In this instance, the guidelines provide for payment of the salary increase to "each permanent full-time employee," without further limitation or restriction.

If the language "or later" was interpreted as you desire, it would have the effect of legislating specific exceptions to a statutory provision the face of which is intended to be quite broad in its coverage. Pursuant to the above-noted case citations, requirements and proscriptions may not be added when the words of the statute in question do not themselves provide for them. We cannot indulge in speculation as to the possible qualifications which might have been in the mind of the Legislature when they have not been expressed.

Over the years, and even in 1991, the Legislative Assembly has attached conditions to the receipt of salary increases or has provided discretion in administrators concerning employees eligible for the receipt of those salary increases. For example, in 1985, the language used was:

> "The actual amount of increases paid the individual employees shall be determined by the director of the agency or institution in accordance, where applicable, with Central Personnel Division classification and compensation plans, except that a director of an agency or institution may grant increases that result in an employee's salary level exceeding the maximum limit of the salary range for that employee's pay grade."

1985 N.D. Sess. Laws ch. 38.

In 1989, the Legislature used the following language:

> "It is the intent of the Fifty-First Legislative Assembly that the 1989-91 compensation adjustment for state employees in the classified service are to be average increases of 7.1% beginning with the month of July 1989 to be

> paid in August 1989. All classified employees not on a probation status are entitled to receive increases of at least $50 per month. Pay grade maximums shall not limit the amount of such an increase. No further increases are provided in the appropriations made by the Fifty-First Legislative Assembly or the 1989-91 biennium."

1989 N.D. Sess. Laws ch. 4.

Even in 1991, for the salary adjustment applicable to the first year of the biennium, the Legislature stated:

> **SECTION 6. Intent - State employee compensation adjustments - Guidelines.** It is the intent of the Fifty-Second Legislative Assembly that 1991-93 compensation adjustments for state employees in the classified service are to be average increases of 4.0 percent beginning with the month of July 1991 to be paid in August 1991. All classified employees not on a probation status are entitled to receive increases of at least fifty dollars per month. Pay grade maximums shall not limit the amount of such an increase.

1991 N.D. Sess. Laws ch. 31, § 6.

As is clear from prior enactments, the Legislative Assembly knows how to provide restrictions and limitations to the granting of state employee salary increases. Either agency heads are given discretion, or the increase applies to employees not on a probation status, or, as in the situation under discussion, all employees working full-time in permanent positions are entitled to the salary increase. If the Legislative Assembly intended to make an exception for employees on probation for any reason, whether as new employees or for disciplinary purposes, it could easily have provided that authority in agency directors as it has before. However, in this case, the entitlement to the salary increase was broadly applied.

Putting the words "or later" in the context of the paragraph, they appear to relate to the availability of the funds for payment, rather than the eligibility of employees to receive the salary increase. Therefore, it appears logical that the sweeping nature of the entitlement to the salary increase, that is, each full-time permanent employee, indicates that if the words "or later" are to be meaningful, they are intended to indicate a circumstance where the salary increase would be made available later than August 1, 1992, on an across-the-board basis rather than an individual exclusionary basis. To add restrictions such as probation for new employees or for disciplinary reasons contravenes the broad legislative intent expressed in the underlying purpose of the statute. It is therefore my opinion that 1991 N.D. Sess. Laws ch. 53, § 2 authorizes payment of the salary increase later than July 1, 1992, if it applies to all employees in an agency, such as might be occasioned by limited appropriation balances. The statute in question does not authorize payment of the salary increase later than July 1, 1992, on an individual employee basis based on reasons not expressed in the statute.

Sincerely,

Nicholas J. Spaeth

rel/krb