

**OPINION**  
**74-239**

August 28, 1974           (OPINION)

Mr. Robert F. Reimers  
R.R. 3, Box M-40  
Carrington, ND 58421

Dear Mr. Reimers:

This is in response to your letter in which you state the following:

"I find it necessary to ask for a legal meaning of the term emergency as found in section 54-16-04 of the N.D.C.C. and possibly related statutes.

Similarly I would like to have the definition or connotation of the term extremely as it is found in section 54-16-04.

Section 54-16-04 provides as follows: "Whenever it is made to appear to the emergency commission by an itemized, verified petition of any board, commission, or officer authorized to expend public funds, and after receiving information from the director of the department of accounts and purchases, that an emergency exists, the emergency commission shall assume that an emergency exists and may order money transferred from one fund to another fund belonging to or appropriated from the same institution or board or the same state enterprise, or in an extremity may authorize money to be drawn from the state treasury to meet the emergency until such time as the legislative assembly can make an appropriation available therefor. The term "emergency" shall be limited to calamities or unforeseen happenings subsequent to the time such appropriation was made and which were clearly not within the contemplation of the legislative assembly and the governor".

The underscored language is pertinent to the questions relating to the meaning of the term emergency. It is noted that the legislature did not in the usual manner define the meaning of the term emergency but limited the meaning and application of such term. Thus while the legislature did not specifically define the term emergency, nevertheless, for all legal and practical purposes the limitation as to the meaning and application of such term has the effect of a statutory definition. Whatever it may mean elsewhere is not material, because section 54-16-04 the term means and is limited to calamities or unforeseen happenings subsequent to the time such appropriation was made and which were clearly not within the contemplation of the legislative assembly and the governor.

The North Dakota Supreme Court in *Backman v. Guy*, 126 N.W.2d. 910 states that the term emergency is defined by statute and that the statutory definition must be applied in interpreting the provisions of chapter (54-16 N.D.C.C.).

The court also recognized that the term calamity is defined by Webster as "a state of deep distress or misery connected with major misfortune or loss." The court also recognized that the term is also

defined as "an extraordinarily grave event marked by great loss and lasting distress and affliction." The court further stated that "unforeseen happenings means an occurrence of events that were not foreseen, the unexpected."

The court further observed that there are two situations when an emergency may exist but in any event the statute qualifies them when it states they must be occurred subsequent to the time of the making of appropriations to be affected by such transfer.

The court, continuing on page 915 with reference to the term emergency, stated as follows: "It is given a limited and restricted meaning stated in the context of the definitive sentence. The situation to be considered by the person who makes the request for an emergency allocation and by the emergency commission when it considers the verified petition filed with it, must meet the standards provided by the statutory definition of the term "emergency" before it may be concluded that an emergency exists, which is remedial under the provisions of the act. These standards are: (1) there must be an existing appropriation; (2) the functions to be performed by the department to meet the emergency must be within the purposes of the appropriation to be affected; (3) the calamity or unforeseen happenings are restricted to areas of governmental functions for which an appropriation exists; and (4) the occurrences of the calamity or the unforeseen happenings clearly must not have been within the contemplation of the legislative assembly and the governor when the appropriation was made."

The discussion by the court was with reference to the question before it which did not involve the specific question as to what constitutes an emergency. Nevertheless, we can take guidance from what was said by the court with reference to such term.

As to the term extremity as found in the following phrase, "or in an extremity may authorize money to be drawn from the state treasurer to meet the emergencies until such time as the legislative assembly can make an appropriation available therefor", we do not have a statutory definition of the term extremity. We must, therefore, resort to the dictionary definition because the terms as found in statutes are to be given an ordinary plain meaning unless the term is defined or limited by statute. See section 1-02-02, and 1-02-03 of the N.D.C.C.

The term "extremity" is defined in Webster's New Twentieth Century Dictionary as "(1) the outermost or utmost point or part; the end; the limit or border; (2) the most intense kind; the highest, greatest, or furthest degree; (3) a state of extreme or utmost necessity, danger, distress, straits, or difficulty; (4) the end of life; dying; (5) an extreme measure; severe or strong action; (6) the hands and feet."

We are unable to improve upon the foregoing definition. It, however, appears obvious that certain portions of the definition would not have application to the term as used and found in section 54-16-04. It would appear and it is our opinion that the second, third, and fifth definition would have application to the matter under consideration. This clearly illustrates that an extremity is substantially more than an emergency.

However, as to the term emergency, the definitions and standards set out in the Backman Case above would be controlling, It is also noted that the first standards is not involved in the present question. However, in our opinion standards (2), (3), and (4) would have application to the question presented and would constitute a legal definition of the word emergency as same is found in section 54-16-04.

Sincerely yours,

Allen I. Olson

Attorney General