

OPINION
76-2

August 10, 1976 (OPINION)

The Honorable Myron Just
Commissioner of Agriculture
State Capitol
Bismarck, ND 58505

Dear Commissioner Just:

This is in reply to your letter of August 2, 1976, wherein you requested opinion as to certain portions of the North Dakota Pesticide Act of 1975, Chapter 4-35 of the North Dakota Century Code. You ask the following question:

"Does subsection 3 of 4-35-19 exempt 'persons conducting laboratory-type research using restricted use pesticides and doctors of medicine and doctors of veterinary medicine applying pesticides as drugs or medication during the course of their normal practice' from licensing and certification requirements or does it exempt them from all provisions of the act?"

Section 4-35-19 provides:

4-35-19. EXEMPTIONS.

1. The licensing and certification requirements of this chapter shall not apply to any person applying pesticides which are not classified for restricted use.
2. The provisions of this chapter relating to licenses and certification requirements shall not apply to a competent person applying restricted use pesticides under the direct supervision of a certified applicator, unless the pesticide labeling requires that a certified applicator personally applies the particular pesticide. A pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place that the pesticide is applied.
3. Persons conducting laboratory-type research using restricted use pesticides and doctors of medicine and doctors of veterinary medicine applying pesticides as drugs or medication during the course of their normal practice.

In comparing subsection 3 with subsections 1 and 2, it is apparent that number 3 owes its existence to an entirely different semantic scheme, as the construction of the sentence in the series is out of place; nor is it even a complete sentence. While a construction

consistent with the meaning of subsections one and two may be immediately appropriate, we turn to the rules of construction followed by courts in construing such ambiguous language, and set out in section 1-02-39.

The legislative history of section 4-35-19 reveals that it was, in somewhat different language, a part of the original Senate Bill 2060 introduced in the 1975 Legislative Assembly as the result of a Legislative Council interim study by the Committee on State and Federal Government. During the legislative session, the bill was subject to considerable amendment by the House and Senate Agriculture Committees to which it was referred. The minutes of these two committees, and the minutes of the Legislative Council committee which considered the bill, show that one of the primary objects, if not the primary object, sought to be obtained was the satisfaction of the requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (86 Stat. 987), as interpreted and applied by the administering federal agency, the U.S. Environmental Protection Agency. On several occasions EPA officials testified before the committees on the requirements of FIFRA and the degree to which the proposed state legislation would satisfy these requirements.

The bill's history further reveals that when it was first considered by the Senate Agriculture Committee on January 10, 1975, several representatives of the State Department of Agriculture appeared before the Committee and offered testimony and several pages of proposed amendments to the bill. Subsection 3 of section 4-35-19 was one such amendment. The explanation of the amendment offered to the Committee by the Department officials was that it had not until recently become clear what the requirements of EPA were going to be for the purposes of the State's implementation of the federal Act, and that the offered amendments would satisfy these requirements.

From this history it is clear that the purpose of the amendments containing subsection 3 was to satisfy the requirements of federal law.

The requirements of the federal law on exemptions to the FIFRA were, at the time the amendment to subsection 3 was introduced, codified at 39 Federal Register 36449. These regulations of EPA, which became effective on October 9, 1974, stated in section 171.4 ("Standards for certification of Commercial Applicators") (emphasis added) at paragraph (e):

- (e) The above standards do not apply to the following persons for purposes of these regulations. (1) Persons conducting laboratory type research involving restricted use pesticides; and (2) Doctors of Medicine and Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of their normal practice.

This language is nearly identical to that of subsection 3 of section 4-35-19. Thus, it is apparent that the language in subsection 3 was taken almost verbatim from the federal regulation applying only to the certification of commercial operators.

In passing the amendments to Senate Bill 2060, including the

amendment to subsection 3, we must conclude, based on the history of the legislation outlined above, that the Legislative Assembly intended to follow the requirements and guidelines established by the federal Act and regulations and intended to apply subsection 3 only to the certification of commercial applicators and not to the provisions of the state Act generally.

We trust the foregoing will be of assistance to you.

Sincerely,

ALLEN I. OLSON

Attorney General