

LETTER OPINION
94-L-159

June 6, 1994

Mr. Brian McClure
Director
Central Personnel Division
Office of Management and Budget
State Capitol
Bismarck, ND 58505-0120

Dear Mr. McClure:

Thank you for your May 6, 1994, letter asking whether 1993 North Dakota Session (N.D. Sess.) Laws ch. 18, ? 3 requires that the salary increase provided for the second half of the 1993-95 biennium be paid to all eligible employees at the same percentage increase.

The section in question provides, in part:

**SECTION 3. LEGISLATIVE INTENT - STATE EMPLOYEE
COMPENSATION ADJUSTMENTS - GUIDELINES.** It is the intent of the legislative assembly that 1993-95 compensation adjustments for state employees are to be \$60 per month beginning with the month of July 1993, to be paid in August 1993, and 3.0 percent beginning with the month of July 1994, to be paid in August 1994. The 3.0 percent adjustment during the second year of the biennium may only be given to the extent that the increase can be paid without an increase in an agency's appropriation. State employees not on a probationary status are entitled to received the increases provided in this section. Temporary and part-time employees must be provided pro rata increases in accordance with the number of hours worked. Pay grade maximums may not be used to limit the amount of any increases under this section.

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).

Where constitutional and statutory provisions are clear and unambiguous, it is improper for the courts to attempt 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).

The parameters set forth by the Legislature for the compensation adjustments for state employees for the 1993-95 biennium, concerning the three percent adjustment for the second year of the biennium include that the three percent may only be given "to the extent" that the increase can be paid without an increase in an agency's appropriation. "State employees not on a probationary status are entitled to receive the increases provided in this section," and temporary and part-time employees receive a pro rata pay increase based on the number of hours worked. An agency may not limit the amount of any pay increase because the amount of the increase would take the employee beyond any applicable pay grade maximums. Finally, the Legislative Assembly intends compensation adjustments for state employees "to be . . . 3.0 percent beginning with the month of July 1994, to be paid in August 1994."

The intent provided by the Legislature for granting state employee pay increases is specific that, for the second year of the biennium, employees are entitled to receive a three percent increase, to the extent that the increase can be paid without an increase in an agency's appropriation. Nonprobationary employees receive the amount grantable within the financial limits of the agency, and temporary and part-time employees receive a prorated amount. The Legislature has not authorized agency administrators to develop a pool of funds for awarding pay increases on some unstated discretionary basis, but has been specific in providing for uniform raises for all employees, even to the extent of not allowing an agency to limit a pay

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increase for those who would exceed a pay grade maximum if they were awarded the full amount of the pay increase.

Previously, when the Legislature wished to grant agency administrators discretion in the amount of pay increases awardable from a more generalized pool of funds, the Legislature has been specific in expressing that discretion. For example, in 1985, the Legislature stated, with respect to state employee pay increases:

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, ? 2.

In 1989, the Legislature stated:

It is the intent of the fifty-first legislative assembly that 1989-91 compensation adjustments for state employees in the classified service are to be average increases of 7.1 percent 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 fifty dollars 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 for the 1989-91 biennium.

1989 N.D. Sess. Laws ch. 4, ? 3.

In 1991, the Legislature stated, for salary adjustments:

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.

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Pay grade maximums shall not limit the amount of such an increase.

1991 N.D. Sess. Laws ch. 31, ? 6.

As these prior enactments show, the Legislative Assembly has at times specifically stated that agency administrators have discretion in the award of pay increases within personnel classification and compensation plans, or that agencies have discretion in the award of salary increases up to a maximum percentage amount with a specific minimum increase included. Contrary to these prior enactments, the 1993 Legislative Assembly did not expressly grant agency discretion in the amount of salary increases, did not provide for an average salary increase, and did not provide for a percentage increase within a minimum amount. The Legislature set for the first year of the biennium a specific dollar amount increase for all eligible employees, and for the second year of the biennium set a percentage increase for all eligible employees awardable to the extent funds were available to pay that three percent increase without an increase in appropriations. To allow flexibility, the Legislature authorized the transfer of funds by an agency or institution between line items in order to provide the three percent employee salary increase. 1993 N.D. Sess. Laws ch. 18, ? 2.

Applying the above precepts of statutory construction to the language used by the 1993 Legislative Assembly, it is my opinion that, for the second year of the 1993-95 biennium, state employee compensation adjustments are to be paid at a uniform percentage of three percent to the extent that the amount of the increase can be provided without an increase in appropriations. All nonprobationary state employees are to receive the same percentage increase, and temporary or part-time employees receive a prorated increase based on their hours worked.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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