

N.D.A.G. Letter to Hanson (Feb. 15, 1990)

February 15, 1990

Honorable Robert E. Hanson
State Treasurer
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Hanson:

Thank you for your December 26, 1989, letter which requests my opinion as to whether 1989 N.D. Sess. Laws ch. 785, § II, unconditionally requires the State Treasurer to transfer \$740,000 to the veterans' postwar trust fund on July 1 of each year, or if N.D.C.C. § 54-44.1-13.1 requires the director of the budget to reduce this amount by the estimated losses caused by the recent referendum.

Chapter 785 of the 1989 Session Laws is an initiated measure approved by the people at the general election on November 8, 1988. Section II of ch. 785 provides:

In order to provide for the increasing needs of veterans and their dependents and to restore the veterans' postwar trust fund's principal balance to its original level as established by the 1981 legislative assembly, the state treasurer shall transfer to the veterans' postwar trust fund on July 1 of each year or as soon thereafter as possible, for 5 successive years commencing on July 1, 1989, the sum of \$740,000 from the state's general fund or from such other sources as appropriated by the legislative assembly until a total of \$3,700,000 has been transferred.

In interpreting statutes, words must be given their "plain, ordinary, and commonly understood meaning" and consideration should be given to the ordinary sense of statutory words, the context in which they are used, and the purpose which prompted their enactment. N.D.C.C. § 1-02-02; Rheaume v. State, 339 N.W.2d 90, 92 (N.D. 1983); see also Knoff v. American Crystal Sugar Co., 380 N.W.2d 313, 316 (N.D. 1986). For purposes of determining the answer to your question, the operative words in section II of chapter 785 are "or as soon thereafter as possible." "[T]he term 'or' is a conjunction indicating an alternative between different things or actions." State v. Silseth, 399 N.W.2d 868, 870 (N.D. 1987). The word "possible" means "capable of existing or happening." Reisdorf v. Mayor and Council of Borough of Mountainside, 277 A.2d 554, 559 (N.J. Super. Ct. Law Div. 1971). Consequently, the transfer of money under chapter 785 is conditioned upon whether the transfer is possible.

Section 54-44.1-13.1 provides:

If as a result of any action taken pursuant to article III of the Constitution of

North Dakota the moneys available in the state general fund or in any special fund in the state treasury are or will be reduced or eliminated, the director of the budget shall reduce the moneys available to all departments, agencies, and institutions for which moneys have been appropriated or are otherwise available from the affected fund for the current biennial period. The director of the budget shall reduce affected budgets by a percentage sufficient to cover the estimated losses caused by the initiative or referendum action, subject to the approval of the budget section of the legislative council. Notwithstanding the provisions of section 54-44.1-13, the authority to make reductions pursuant to this section applies equally to all entities of the executive, legislative, and judicial branches.

N.D.C.C. § 54-44.1-13.1 "applies equally to all entities." Where terms of a statute are positive and unambiguous, exceptions not made by the statute cannot be read into the law. Walsvik v. Brandel, 298 N.W. 2d 375, 377 (N.D. 1980). Nor is it permissible to indulge in speculation as to probable or possible qualifications or exceptions which might have been in mind at the time. Haider v. Montgomery, 423 N.W.2d 494, 495 (N.D. 1988); Rausch v. Nelson, 134 N.W.2d 519, 525 (N.D. 1965). Therefore, the transfer to the veterans' postwar trust fund would be on the same status as all other transfers and appropriations from the general fund.

In addition, the following rules of construction further support the proposition that § 54-44.1-13.1 supersedes any directive made by chapter 785. The first rule is contained in N.D.C.C. § 1-02-07, which provides:

Whenever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision.

The second is contained in N.D.C.C. § 1-02-27, which states, "[i]f the provisions of any chapter or title conflict with or contravene the provisions of any other chapter or title, the provisions of each chapter or title must prevail as to all matters in question arising thereunder out of the same subject matter."

N.D.C.C. § 54-44.1-13.1 provides that the director "shall" reduce moneys available to all departments, agencies and institutions. The reduction of moneys applies "equally to all entities" only where losses are caused by a referendum. N.D.C.C. § 54-44.1-13.1 mandates the director of the budget and all other state entities to take action only when moneys available to the general fund or any special fund are reduced due to action taken pursuant to N.D. Const. art. III. In contrast, ch. 785, § II, is a permissive directive to the State Treasurer to transfer \$740,000 to the veterans' postwar trust fund each year "or as soon thereafter as possible."

To give effect to both of these statutes, the mandatory reductions in N.D.C.C. § 54-44.1-13.1 must be read to supersede the permissive directive to the treasurer

contained in 1989 Sess. Laws ch. 785, II.

I hope that the above discussion has adequately answered your question.

Sincerely,

Nicholas J. Spaeth

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