

LETTER OPINION
97-L-17

February 4, 1997

Honorable Donna Nalewaja
State Senator
Senate Chambers
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Senator Nalewaja:

Thank you for your letter requesting a review of N.D.C.C. §§ 20.1-03-12.1 (Habitat restoration stamp required -- Use of revenue -- No land purchases allowed) and 20.1-03-13 (Stocking and propagation of upland game). Specifically, you ask what is required by these statutes of the Game and Fish Department (Department) as they relate to the stocking and propagation of pheasants. You also request a review of the Department's expenditures under these statutes.

N.D.C.C. § 20.1-03-12.1 provides:

A habitat restoration stamp is required for every resident and nonresident general game license for which a stamp fee of three dollars must be charged. The habitat restoration stamp fee is in addition to the annual general game license fee charged under section 20.1-03-12. No land may be purchased with habitat restoration stamp moneys. All moneys generated by the habitat restoration stamp program, including the habitat restoration stamp print, the interest earned on the habitat restoration stamp program, the interest earned on any unspent habitat restoration stamp program funds, and any and all other moneys resulting from the habitat restoration stamp program must be placed in the habitat restoration stamp fund and are intended to provide a fund to lease privately owned lands for wildlife habitat. Not more than ten percent of this fund may be used for administrative purposes. All other moneys generated by the habitat restoration stamp program must be used for lease payments. Any moneys generated by the habitat restoration stamp program and not expended during a biennium must be expended for the same purposes during the next biennium. Any land needed for reestablishing the wildlife population and habitat may be leased for periods up to six years, but no more than forty

acres [16.19 hectares] in any section [259.00 hectares] of land may be leased for these purposes. Hunting may not be prohibited on these lands. In those judicial districts encompassing the historically prime pheasant range, as determined by the director, fifty percent of the expenditures within that judicial district must be for pheasant restoration and enhancement.

N.D.C.C. § 20.1-03-13 provides:

The department shall allocate not less than fifty thousand dollars biennially, from moneys collected under section 20.1-03-12, to the stocking and propagation of upland game.

The primary objective in interpreting a statute is to ascertain and give meaning to the intent of the Legislature. Huntley v. Timm, 435 N.W.2d 683, 684 (N.D. 1989). "When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." N.D.C.C. § 1-02-05.

"In interpreting a statute words are to be given their plain, ordinary, and commonly understood meaning." Weber v. State Farm, 284 N.W.2d 299, 302 (N.D. 1979), citing N.D.C.C. § 1-02-02. If the statutory language is clear and unambiguous, that language cannot be disregarded under the pretext of pursuing the legislative intent because the intent is presumed to be clear from the face of the statute. District One Republican Committee v. District One Democrat Committee, 466 N.W.2d 820, 824-25 (N.D. 1991).

N.D.C.C. §§ 20.1-03-12.1 and 20.1-03-13 are clear and unambiguous. Section 20.1-03-13 provides for an allocation of \$50,000 for the stocking and propagation of "upland game" from moneys collected under section 20.1-03-12 (schedule and fees for licenses and permits). The phrase "upland game" is traditionally defined in the Governor's proclamation issued under N.D.C.C. ch. 20.1-08 to include "grouse, Hungarian partridge, pheasants, and tree squirrels." See Letter from Attorney General Nicholas J. Spaeth to Dale Henegar (September 1, 1992).

Technically, the phrase "upland game birds" is usually "an exclusive reference to members of the family *Phasianidae*: non-migratory, chicken-like birds including the partridge, grouse, turkey, and quail." Robert L. Eng, "Upland Game Birds," from Inventory and Monitoring of Wildlife Habitat, compiled and edited by Allen Y.

Cooperrider, Raymond J. Boyd, and Hanson R. Stuart (U.S. Dep't Interior, September 1986), p. 407. See also 50 CFR Part 32, 58 FR 48732, 48735 (1997) (defining "upland game hunting" to include the hunting of "pheasant, partridge, grouse and turkey"). Historically, the following upland game birds have been either stocked or hunted in North Dakota: sharp-tailed grouse, sage grouse, ruffed grouse, pinnated grouse (prairie chicken), pheasant, Hungarian partridge, wild turkey, bobwhite quail, and chukar partridge. Morris D. Johnson and Joseph Knue, Feathers from the Prairie, a Short History of Upland Game Birds (N.D. Game & Fish Dep't, Dale R. Henegar, Commissioner, 1989). Thus, "upland game birds" in North Dakota include different species and varieties of grouse, pheasant, partridge, turkey, and quail. However, the taking of "wild turkey" is governed by a separate statute. N.D.C.C. § 20.1-04-07.

N.D.C.C. § 20.1-03-13 does not provide that the \$50,000 be allocated from the habitat restoration fund, but rather "from moneys collected under section 20.1-03-12" (regular license fees). The Office of the State Auditor, not the Office of Attorney General, is responsible for auditing the Game and Fish Department to determine whether it complies with legislative spending directives. The State Auditor has audited the Game and Fish Department under N.D.C.C. § 20.1-03-13 and determined that it is in compliance with that statute by expending more than \$50,000 biennially for the stocking and propagation of upland game. Attached is a memorandum from Fred Ehrhardt, CPA, Office of State Auditor, to Lyle Witham, Office of Attorney General (January 28, 1997), explaining the State Auditor's findings regarding compliance with N.D.C.C. § 20.1-03-13.

N.D.C.C. § 20.1-03-12.1 provides that the funds collected under the habitat restoration stamp "are intended to provide a fund to lease privately owned lands for wildlife habitat." Not more than ten percent of this fund may be used for administrative purposes. Id. All other moneys generated by the habitat restoration stamp program must be used for "lease payments" for wildlife habitat. Id. In those judicial districts encompassing the historically prime pheasant range, as determined by the director, fifty percent of the expenditures within that judicial district must be for pheasant restoration and enhancement. Id. Therefore, after the director has determined which judicial districts encompass the historically prime pheasant range, fifty percent of the lease payments for wildlife habitat in that judicial district must be for pheasant restoration and enhancement. N.D.C.C. § 20.1-03-12.1 specifically requires that the money from the habitat restoration stamp be used for "lease

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payments," and does not allow the money in the fund to be applied for stocking and propagation of pheasants.

The State Auditor also has audited the Game and Fish Department under N.D.C.C. § 20.1-03-12.1 and determined that it is in compliance with that statute. See the attached memorandum from Fred Ehrhardt, CPA, Office of State Auditor, to Lyle Witham, Office of Attorney General (January 28, 1997), explaining the State Auditor's findings regarding compliance with N.D.C.C. § 20.1-03-12.1.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

Enclosures