

DEFINITIONS IN RULES - EFFECT ON INTERPRETATION OF OTHER RULES OR LAWS

At its meeting on July 14-15, 1999, the Administrative Rules Committee considered rules adopted by the State Department of Health under North Dakota Administrative Code (NDAC) Chapter 33-20-01.1 to extend solid waste rules coverage to agricultural processing operations and farming operations. Concern was expressed that the definition added to NDAC Section 33-20-01.1-03 for the phrase "farming operation" might affect interpretation of property tax laws or other statutory or rule provisions that are intended to apply to farms. This memorandum was requested to examine statutory provisions defining farming activities for property tax purposes and court decisions regarding extending application of definitions to other areas of law or rules.

Definitions contained in statutes or rules are almost always preceded by language of limitation regarding application of the definitions. This is the case with NDAC Section 33-20-01.1-03, which provides that the "terms used throughout this title have the same meaning as in North Dakota Century Code chapter 23-29, except:

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15. "Farming operation" means the production or raising of crops or livestock. Production or raising of crops or livestock includes the following:
 - a. Cultivating, growing, or harvesting agricultural crops;
 - b. Breeding, feeding, grazing, or finishing of livestock; or
 - c. Raising or producing poultry or unprocessed poultry products, unprocessed milk or dairy products, unprocessed livestock products such as wool, or unprocessed fruits, vegetables, or other horticultural products.

The term "farming operation" includes any concentrated or confined animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code chapter 33-16-03 that recycles or applies its manure and other residual agricultural material to soils as recycled agricultural material, but does not include a concentrated or confined animal feeding operation that generates manure or other residual agricultural material that is discarded as agricultural waste. The term "farming operation" does not include any

processing of crops, livestock, or other agricultural products by an agricultural processing operation."

Because the introductory language to the section limits application of the definition to NDAC Title 33, it appears the State Department of Health did not intend its definition to apply outside the administrative rules the department has adopted. North Dakota Century Code (NDCC) Section 28-32-02 gives an administrative agency authority to adopt rules "in conformity with any statute administered or enforced by the agency." This would limit agency rulemaking authority to the statutory provisions within the agency's purview and because the agency authority is so limited, it appears very unlikely that a court would extend an agency definition to an area of law in which the agency has no rulemaking authority.

When terms are defined by statute, courts will not establish their own definitions or apply definitions found in other areas of law or rules. The general rules are stated at 73 Am. Jur. 2nd, Statutes, Section 225 as follows:

The lawmaking body's own construction of its language, by means of definitions of the terms employed, should be followed in the interpretation of the act or section to which it relates and is intended to apply. . . . Where a statute contains its own definition of a term used therein, the term may not be given the meaning in which it is employed in another statute

At 73 Am. Jur. 2nd, Statutes, Section 233, it is stated that "the same words or phrases used in different statutes do not necessarily have the same meaning where the statutes relate to different subjects."

The practice of legislative bodies identifying the subject matter to which definitions apply is recognized in Sutherland Statutory Construction Section 47.07 where it is stated that "[i]t is commonly understood that such definitions establish meaning where the terms appear in that same act or in the case of general interpretative statutes, the definition extends to as much legislation as the general act itself designates."

Statutory provisions of North Dakota law apply to use of definitions in law. In general, words used in any statute are to be understood in their ordinary sense, but any words explained in law are to be understood as thus explained (NDCC Section 1-02-02). Words defined by statute must be construed according to that definition (NDCC Section 1-02-03). A somewhat more troublesome provision is

contained in NDCC Section 1-01-09, which provides "whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase whenever it occurs in the same or subsequent statutes, except when a contrary intention plainly appears." Section 1-01-09 is of concern because it appears to require use of a definition, even in unrelated statutes, unless there is some expression that it is not to be used.

The North Dakota Supreme Court has had several occasions to examine use of definitions to interpret provisions of law. The following are among the decisions of the court:

1. The court declined to apply a definition from the Administrative Agencies Practice Act to use of the same term in a criminal statute "because criminal statutes are dissimilar from statutes that govern administrative proceedings." (*State v. Thill*, 468 N.W.2d 643 (1991)).
2. The court declined to use a definition from NDCC Title 39 to interpret the same words used in NDCC Section 24-10-02 because the definitions in Title 39 are limited to that title because they are prefaced by the clause "**In this title**, unless the context or subject matter otherwise requires" (emphasis supplied) (*Ames v. Rose Twp. Bd. of Supervisors*, 502 N.W.2d 845 (1993)).
3. The court has ruled that the manner in which a statutory term is defined in one instance will not necessarily control the definition to be applied in a different situation (*Matter of Estate of Josephson*, 297 N.W.2d 444 (1980)).
4. The court recognized that a definition in the criminal code is prefaced by the words "as used in this title" but the court said the definition has some application in the context of delivery of controlled substances and the court will look to the NDCC Title 12.1 criminal code definition for "guidance" in construing a provision of the controlled substances law of NDCC Title 19 (*State v. Jones*, 591 N.W.2d 138 (1999)).
5. The court applied the statutory construction provisions of NDCC Sections 1-02-02 and 1-02-03 in holding that "when words or phrases are defined by statute, that definition may be relied upon in construing the meaning of those words or phrases in a **similar** statute (emphasis supplied) (*Larson v. Baer*, 418 N.W.2d 282 (1988)).
6. The court applied NDCC Section 1-01-09 to rule that "when the meaning of a word or phrase is defined in a section of our code, that definition applies to any use of the word or phrase in other sections of the code, except when a contrary intent plainly appears." (*Northern X-Ray Co. v. State*, 542

N.W.2d 733 (1996); *Adams County Record v. Greater North Dakota Ass'n*, 529 N.W.2d 830 (1995); *Guardianship of Braaten*, 502 N.W.2d 512 (1993)).

7. The court has said that administrative rule construction of a statute is entitled to deference **if the interpretation does not contradict clear and unambiguous statutory language** (emphasis supplied) (*Western Gas Resources, Inc. v. Heitkamp*, 489 N.W.2d 869 (1992)).

STATUTORY PROVISIONS REGARDING PROPERTY TAX AND AGRICULTURAL PROPERTY

In NDCC Section 57-02-01 there is a definition of the phrase "agricultural property" for purposes of classification and assessment of property for property tax purposes. This definition is prefaced by the phrase "as used in this title" which is broad enough language to cover all property tax provisions in Title 57. The other significant property tax provision relating to farming is the farm residence and buildings property tax exemptions contained in Section 57-02-08(15). That subsection defines several terms including "farm," "farmer," and "net income from farming activities." Each of these definitions is prefaced by a limitation that the definition applies only within this subsection. The phrase "farming operation," which is defined in the State Department of Health solid waste rules, does not appear in the property tax laws of Title 57. Because the statutory provisions relating to property taxes for agricultural property contain their own definitions, it is very unlikely that a court would supplant these definitions with the definition adopted by the State Department of Health for solid waste management purposes.

CONCLUSION

The definition of "farming operation" adopted by the State Department of Health is preceded by language limiting its application to the title in which State Department of Health solid waste rules are found. Statutory provisions governing property tax application to agricultural property contain definitions of terms used in the statutory provisions governing property tax considerations. Court decisions indicate that definitions will not be applied in provisions outside the scope of the law or rules in which the definition appears unless there is no applicable definition and the court is convinced the definition would be used in a similar sense. The court will not apply a definition that would contradict clear and unambiguous statutory language. It appears extremely unlikely that the State Department of Health rule definition of "farming operation" would be applied to property tax provisions because property tax provisions relating to agricultural property are very dissimilar to

solid waste rules, contain their own definitions of terms used, and do not contain the phrase "farming operation."