

## ADMINISTRATIVE RULES COMMITTEE HOLDING CONSIDERATION OF A RULE TO A SUBSEQUENT MEETING

Under North Dakota Century Code (NDCC) Section 28-32-03.3(2) as amended in 1997, "the committee on administrative rules may find a rule void at the meeting at which the rule is initially considered by the committee or **may hold consideration of that rule for one subsequent meeting**" (emphasis added). The question to be addressed in this memorandum is whether the statutory phrase "may hold consideration" requires an affirmative act of the Administrative Rules Committee or whether all administrative rules are automatically carried over for one meeting for consideration by the committee.

Words used in any statute are to be understood in their ordinary sense (NDCC Section 1-02-02) and words and phrases must be construed according to the context and the rules of grammar and the approved usage of the language (NDCC Section 1-02-03). The North Dakota Supreme Court, in *Hamich, Inc. v. State*, 564 N.W.2d 640 (1997), stated:

When interpreting a statute to determine the Legislature's intent, we look first to the language of the statute and give it its plain, ordinary, and commonly understood meaning. . . . If a statute is ambiguous, extrinsic aids useful in construing the statute to determine legislative intent include the object sought to be attained, the legislative history, and the administrative construction of the statute. . . . The administrative construction of a statute by an agency administering the law is entitled to deference if that interpretation does not contradict clear and unambiguous statutory language.

The statutory guidance for construing ambiguous statutory language is contained in NDCC Section 1-02-39, which provides:

If a statute is ambiguous, the court, in determining the intention of the legislation, may consider among other matters:

1. The object sought to be attained.
2. The circumstances under which the statute was enacted.
3. The legislative history.
4. The common law or former statutory provisions, including laws upon the same or similar subjects.
5. The consequences of a particular construction.
6. The administrative construction of the statute.
7. The preamble.

The initial question to consider is whether "may hold" is capable of differing interpretations, making the statutory provision ambiguous. To determine the ordinary meaning of the word "hold" presents a problem because the term is capable of many nuances of meaning. Reference to Webster's New World Dictionary (2nd College Edition) provides a definition that includes to take and keep with the hands, arms, or other means; grasp; clutch; seize; to keep from going away; to keep in a certain place or position, or in a specified condition; to keep from falling; to keep from acting; to keep from advancing or attacking; to keep from getting an advantage; to get and keep control of; to continue; maintain; to keep for delivery later; to keep for use later; to keep under obligation; to call together or preside over; to have or keep in the mind; to have an opinion or belief about; to keep up; continue; to go no further; a temporary halt or delay; and an order reserving something.

Although the word "hold" may be used in differing senses, it is important to observe that the statutory provision uses the words "**may** hold" to describe carrying over consideration to a subsequent meeting. As the North Dakota Supreme Court has observed, "the use of the word 'may' is permissive and indicates it is a matter of discretion." (*Matter of adoption of K. S. H.*, 442 N.W.2d 417 (1989)). Because the Administrative Rules Committee "may" hold consideration of a rule to a subsequent meeting, it appears that rules are subject to discretionary authority of the committee to carry them over to a subsequent meeting, which means rules would not be automatically carried over for consideration. Because the word "may" always implies discretion, it appears the statutory language is unambiguous.

It also appears from discussions in the minutes of the Administrative Rules Committee before recommending 1997 House Bill No. 1030, which created the authority to carry over consideration of rules, that the committee was concerned with instances in which further information would be required to allow the committee to make an informed decision on whether to void a rule. It appears the intent was that the committee would direct certain questions to the agency and the agency would return to the subsequent committee meeting with the requested information. To interpret the statutory provision to automatically carry rules over to a subsequent meeting would create agenda difficulties due to uncertainty about whether to schedule discussion on

certain issues and how much time might be needed. It would also require that each agency appearing before the committee would have to be in attendance

for the duration of the subsequent meeting in case questions arise and may not have advance notice of issues about which the committee is concerned.