

[274] November 6, 1996

**Mr. Dewey W. Wells, Chairman**

N.C. Natural Heritage Trust Fund Board of Trustees  
c/o Wellspring Farm  
1890 Pilot Ridge Road  
Collettsville, N.C. 28611

**RE:** Advisory Opinion: Interpretation of N.C. Gen. Stat. §113-77.7(c)

Dear Mr. Wells:

By letter received July 8, 1996, you requested an advisory opinion on whether the Natural Heritage Trust Fund Board of Trustees' long-standing practice not to direct the State Treasurer to establish a special stewardship account within the Fund constitutes a failure to perform a mandatory statutory duty prescribed by N.C. Gen. Stat. §113-77.7(c). Based upon our review of the statute and consultation with the State Treasurer's Office and the Office of State Budget and Management, we are pleased to provide you with the following advisory opinion.

**SUMMARY**

The Board's practice not to direct the State Treasurer to establish a special stewardship account within the Fund follows a reasonable interpretation of N.C. Gen. Stat. §113-77.7(c) in light of what the Natural Heritage Trust Fund is meant to accomplish and the presumably unintended consequence which arises if the statute were read literally. Further, the Board's practice does not appear to offend any laws pertaining to the State Treasurer. However, since N.C. Gen. Stat. §113-77.7 is susceptible to various interpretations, we advise the Board to seek its amendment, in order to clarify legislative intent and ensure its consistency with the Board's long-standing practice.

**BACKGROUND**

Article 5A of Chapter 113 establishes the State's Natural Heritage Trust Program, and more specifically the Natural Heritage Trust Fund, which is administered by a nine-member Board of Trustees. Pursuant to N.C. Gen. Stat. §113-77.9(b), the legislature granted the Board authority to expend Fund monies for both acquisition and management of ecologically significant natural areas.

To pay for potential land management costs, the legislature authorized the establishment of a special stewardship account within the Fund. N.C. Gen. Stat. §113-77.7(c) provides that:

[w]hen the State acquires land pursuant to this Article, the Chairman of the Board of Trustees shall direct a request to the State Treasurer to set aside an amount from the Fund not to exceed twenty percent (20%) of the appraised value of the land acquired, or the land affected if less than a fee interest was acquired, to be placed in a special stewardship account in the Fund. The special stewardship account shall be a non-lapsing account, and income derived from investment of the account shall be credited to the account. The special stewardship account shall be used for the management of land acquired pursuant to this Article, as directed by the Trustees, so long as such land remains in the Trust. (emphasis added)

Despite this statutory authorization in 1987, the Board has never requested the State Treasurer to

allocate any Fund monies into a special stewardship account. Instead, the Board has chosen to expend Fund monies almost exclusively on land acquisition, not land management. The justification for the Board's decision is the fact that acquisition costs of proposed tracts always have exceeded existing monies in the Fund, leaving little or no monies available for land management purposes. Thus, the Board never has appropriated any monies for land management, except once, through a special one-time grant. Rather than establishing the stewardship account, the Board has designated the state agency which proposes a particular tract for acquisition--either the Department of Environment, Health and Natural Resources, the Department of Agriculture, or the Wildlife Resources Commission--to accept and finance all associated land management responsibilities.

You have requested an opinion as to whether the Board's long-standing practice not to establish a stewardship account within the Fund constitutes a failure to perform a mandatory statutory duty prescribed by N.C. Gen. Stat. §113-77.7(c).

#### ANALYSIS

N.C. Gen. Stat. §113-77.7(c) must be interpreted in light of several well-established principles of statutory construction. Legislative intent controls the meaning of a statute; and in ascertaining this intent, one must consider the act as a whole, weighing the language of the statute, its spirit, and that which the statute seeks to accomplish. *Hylar v. GTE Products Co.*, 333 N.C. 258, 425 S.E.2d 698 (1993). Additionally, legislative intent may be inferred from the nature and purpose of a statute and the consequences which would follow, respectively, from various constructions. *Alberti v. Manufactured Homes, Inc.*, 329 N.C. 727, 407 S.E.2d 819 (1991). Statutory interpretation properly begins with an examination of the plain words of the statute. If the language of the statute is clear and not ambiguous, one must conclude that the legislature intended the statute be implemented according to the plain meaning of its terms. *Correll v. Division of Social Services*, 332 N.C. 141, 144, 418 S.E.2d 232, 235 (1992).

N.C. Gen. Stat. §113-77.7(c) appears susceptible to at least two interpretations. First, the statute can be read literally to impose upon the Board a mandatory duty--that after acquiring any tract, it must request the State Treasurer to set aside an amount "not to exceed" twenty percent (20%) of the land's appraised value in a stewardship account. Similarly, the specific phrase "not to exceed" can be construed to mean that the Board can allocate any amount under twenty percent (20%) of the appraised value of the land acquired. Since the legislature did not provide a minimum allocation figure, only a maximum, conceivably the legislature intended that the Board could grant any allocation up to twenty percent (20%), including a zero allocation. Therefore, following this strict, literal interpretation of N.C. Gen. Stat. §113-77.7(c), the Board could fulfill its mandatory statutory duty by simply requesting the State Treasurer to allocate \$-0- from the Fund to the stewardship account each time a particular tract was acquired. To interpret the statute otherwise (i.e., to require the Board to request a sum certain for allocation) is not consistent with the plain language of the phrase "not to exceed twenty percent (20%)." The legislature is presumed to have used the words of a statute to convey their natural and ordinary meaning. *Wood v. J.P. Stevens & Co.*, 297 N.C. 636, 256 S.E.2d 692 (1979).

A literal interpretation of N.C. Gen. Stat. §113-77.7(c) yields the presumably unintended consequence of imposing a mandatory duty upon the Board to send a formal request to the State Treasurer, even if no monies from the Fund are to be allocated into a stewardship account. Imposing this duty upon the Board would not further any aim of the Natural Heritage Trust

Program and would only create unnecessary paperwork for both the State Treasurer and the Board. When a literal interpretation of the statutory language yields absurd results, however, or contravenes clearly expressed legislative intent, "the reason and purpose of the law shall control and the strict letter thereof shall be disregarded." *Mazda Motors v. Southwestern Motors*, 296 N.C. 357, 361, 250 S.E.2d 250 (1979); *Charlotte Housing Authority v. Patterson*, 120 N.C. App. 552, 556, 464 S.E.2d 68 (1995). We believe that interpreting N.C. Gen. Stat. §113-77.7(c) to require the Board to direct a formal request to the State Treasurer for a zero allocation is unreasonable and could not have been the intent of the legislature.

Another interpretation of N.C. Gen. Stat. §113-77.7(c) is that it establishes the exclusive means through which the Board must earmark monies within the Fund for land management; but, it does not impose upon the Board a mandatory duty to utilize it. Following this interpretation, if the Board decides to expend monies for land management, then it necessarily must request that the State Treasurer establish the special stewardship account and deposit therein an amount from the Fund not to exceed twenty percent (20%) of the land's appraised value. However, if the Board decides not to expend monies for land management, the Board is under no obligation to direct any request to the State Treasurer concerning land management and the stewardship account. This latter interpretation does not yield itself to an unreasonable result and takes into account the fiscal reality that the Fund continually has had insufficient monies to cover both acquisition and management of desired lands.

We believe that this latter interpretation is more consistent with the intent of the legislature than a more literal construction. It does not appear to offend any laws pertaining to the State Treasurer and for the most part, comports with the Board's practices since its inception in 1987. When interpreting an ambiguous statute, the construction adopted by those who administer and execute a statute "is entitled to great consideration, especially if such construction has been observed and acted upon for many years." *State ex rel. Utilities Comm'n v. The Public Staff--N.C. Utilities Comm'n*, 309 N.C. 195, 211, 306 S.E.2d 435, appeal after remand, 320 N.C. 1, 358 S.E.2d 35 (1983); *Walls & Marshall Fuel Co., Inc. v. N.C. Dept. of Revenue*, 95 N.C. App. 151, 381 S.E.2d 815 (1989). Although not controlling, such a construction however "is strongly persuasive." *John R. Sexton & Co., v. Justus*, 342 N.C. 374, 380, 464 S.E.2d 268 (1995).

Under either interpretation, N.C. Gen. Stat. §113-77.7(c) sets forth the exclusive means through which the Board must allocate monies within the Fund for land management. We advise that in the future the Board should refrain from making special grants from the Fund for land management purposes, and instead, establish and utilize the stewardship account as prescribed by N.C. Gen. Stat. §113-77.7(c) and N.C. Gen. Stat. §113-77.9(b).

## CONCLUSION

In conclusion, the Board's long-standing practice appears to accomplish what the legislature intended under Article 5A of Chapter 113. The legislature charged the Board with a dual responsibility, to acquire and manage ecologically significant lands. The Board has carried out both responsibilities by acquiring lands with Fund monies and delegating land management responsibilities to the state agencies involved. Since the Board has carried out its overall statutory duties, its construction of N.C. Gen. Stat. §113-77.7(c) is reasonable under the present circumstances, with the possible exception of its one time special grant for land management.

Since N.C. Gen. Stat. §113-77.7(c) is subject to varying interpretations--specifically whether or

not it imposes a mandatory duty upon the Board to request and fund a special stewardship account--we advise the Board to seek legislative amendment of this statute to ensure that the Board's long-standing practice is consistent with legislative intent. If it is not doing so already, we also advise the Board that after it votes to acquire a tract, it should make a specific finding on the record concerning the funding, or lack of funding, for associated land management responsibilities.

Please call us if you have any questions or need additional assistance.

**Daniel C. Oakley**  
Senior Deputy Attorney General

*David W. Berry*  
Assistant Attorney General