

**Iowa Department of Justice
Memorandum**

To: Mark Schouten, HSEMD Administrator
From: Matt Oetker, Assistant Attorney General
Date: May 30, 2013
Re: Flood Mitigation Board Statutory Interpretation

You have requested my opinion on three aspects of the flood mitigation program. *See* Iowa Code chapter 418. First, you ask me to review the local matching funds provision of Iowa Code section 418.9(2)(d). Second, you ask me to review the statutory language concerning the board's approval of flood mitigation projects. In the interest of clarity, each issue will be discussed in turn.

I. Local Matching Funds.

As set forth in chapter 418, in determining whether to approve a project submitted by a governmental entity, the flood mitigation board must consider a number of items, including, as most relevant to this issue, the "extent to which the project would utilize local matching funds." Iowa Code section 418.9(2)(d). The board is prohibited from approving a flood mitigating project submitted by a governmental entity "unless at least fifty percent of the total cost of the project, less any federal financial assistance for the project, is funded using local matching funds" Your question centers squarely on interpreting this language for purposes of computing the required local matching fund amount.

Resolution of your question requires the interpretation of section 418.9(2)(d). "The purpose of statutory interpretation is to determine the legislature's intent." *Doe v. Iowa Dep't of Human Servs.*, 786 N.W.2d 853, 858 (Iowa 2010). "Legislative intent is determined 'from the words chosen by the legislature, not what it should or might have said.'" *State v. Freeman*, 705 N.W.2d 286, 288 (Iowa 2005) (quoting *Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004)). Statutory words that are not defined by the legislature must be given their ordinary and common meaning. *Comes v. Microsoft Corp.*, 646 N.W.2d 440, 445 (Iowa 2002).

Where a statute is not ambiguous and the plain meaning of a statute is ascertainable, the inquiry must end. *Id.* However, where a statute is ambiguous, the principles of statutory construction should be applied with the goal of giving effect to legislative intent. *State v. Dann*, 591 N.W.2d 635, 638 (Iowa 1999); *In Interest of S.M.D.*, 569 N.W.2d 609, 611 (Iowa 1997). A statute is ambiguous if "reasonable minds could differ or be uncertain as to the meaning of the statute." *State v. McCullah*, 787 N.W.2d 90, 94 (Iowa 2010). "Ambiguity arises in two ways – either from the meaning of specific words or 'from the general scope and meaning of the statute when all of its provisions are

examined.” *Id.* (quoting *Carolan v. Hill*, 553 N.W.2d 882, 887 (Iowa 1996)).

Applying these rules to the present issue, I believe section 418.9(2)(d) is ambiguous as it can be reasonably interpreted in at least two different ways. Specifically, ambiguity arises in the uncertainty as to whether, in computing the local matching funds amount, the federal financial assistance is subtracted from the “total cost of the project” or from “fifty percent of the total cost of the project.” For illustrative purposes, the differing interpretations can be shown as follows (assuming the total cost of the project is 100 and federal funding represents the minimum of 20 percent):

Interpretation One:	Total Cost of Project:	100
	<u>Less Federal Funding:</u>	<u>20</u>
	Remaining Balance	80

Federal funding is first subtracted from the total cost of the project and fifty percent requirement results in local matching funds of 40 percent of the total cost of the project.

Interpretation Two:	50 percent of project:	50
	<u>Less Federal Funding:</u>	<u>20</u>
	Remaining Balance	30

Federal funding is subtracted from the fifty percent of the total cost of the project, which results in the local matching funds being 30 percent of the total cost of the project.

As noted above, the alternative scenarios are dependent upon whether the federal funding is subtracted from the “total cost of the project” or from “fifty percent of the total cost of the project.” Because section 418.9(2)(d) is capable of two alternative but reasonable meanings, I believe the statute is ambiguous, which then allows for the use of the rules of statutory construction to determine legislative intent.

A basis rule of statutory construction provides that every clause and word of a statute must be given effect, if possible. *TLD Home Health Care, L.L.C. v. Iowa Dep’t of Human Servs.*, 638 N.W.2d 708, 713 (Iowa 2002). *See also Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Shell Oil Co.*, 606 N.W.2d 376, 380 (Iowa 2000) (stating that “[w]hen construing a statute, we read the language used, and give effect to every word”). In this respect, I believe section 418.9(2)(d) evidences legislative intent that local matching funds be used to fund at least a portion of the total cost of the project. If we return to the interpretations above and if we assume the federal funding for the project was greater than fifty percent, Interpretation Two results in a negative local matching fund figure, as illustrated as follows (assuming the total cost of the project is 100 and federal funding represents 60 percent):

Interpretation One:	Total Cost of Project:	100
	<u>Less Federal Funding:</u>	<u>60</u>
	Remaining Balance	40

Fifty percent requirement results in local matching funds of 20 percent of the total cost of the project.

Interpretation Two:	50 percent of project:	50
	<u>Less Federal Funding:</u>	<u>60</u>
	Remaining Balance	-10

Under the second interpretation, the local matching funds portion results in a negative figure.

Interpreting section 418.9(2)(d) such that the federal funding is subtracted from fifty percent of the total cost of the project results in the possibility that a proposal could be approved with no local matching funds. Such an interpretation renders the local matching funds portion of the statute superfluous and does not given effect to the local matching funds statutory provisions. *See Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 520 (Iowa 2012) (holding that each term in a statute must be given effect and a statute should not be read “so that any provision will be rendered superfluous”). Furthermore, to read section 418.9(2)(d) to require the federal funding be subtracted from the fifty percent requirement results in a negative local matching figure whenever federal funding constitutes more than fifty percent of the project. Another rule of statutory construction requires statutes be read to avoid “unreasonable or absurd consequences.” *The Sherwin-Williams Co. v. Iowa Dep’t of Revenue*, 789 N.W.2d 417, 427 n.8 (Iowa 2010).

In light of the above, it is my opinion that Interpretation One above constitutes the more reasonable interpretation of section 418.9(2)(d). Thus, under this section, federal financial funding should be subtracted from the total cost of the project and fifty percent of that difference constitutes the minimum local matching fund amount.

II. Project Approval Date.

Pursuant to section 418.14(1)(a), a “governmental entity receiving sales tax revenues pursuant to this chapter is authorized to issue bonds that are payable from revenues deposited in the governmental entity’s flood project fund created pursuant to section 418.13 for the purpose of funding a project in the area from which sales tax revenues will be collected.” However, section 418.15 provides that a “governmental entity shall not receive remittances of sales tax revenue under this chapter after twenty years from the date the governmental entity’s project was approved by the board.” Presumably, a period will expire between the time the board approves a project and the time the governmental entity could issue a bond. As noted by one governmental entity in a communication to the board, “[d]epending on when the board approves a project and when the debt

is issued, the last bond payment may not be covered by sales tax increment due to the 20-year limitation in the legislation.” April 29, 2013 letter from the City of Dubuque (City Manager Michael C. Van Milligen) to HSEMD (John Benson, Legislative Liaison/Alternate State Coordinating Officer). Therefore, a request has been made that the board define by administrative rule that the “board approval date” be considered the same as the bond date set forth in the approved certified schedule submitted to the Department of Revenue pursuant to Section 418.12(4)(a).

In evaluating this proposal, I pause to note that an agency is precluded from enacting an administrative rule in contravention of a statute or contrary to legislative intent. *See City of Marion v. Iowa Dep’t of Revenue and Finance*, 643 N.W.2d 205, 207 (Iowa 2002). My concern centers on the belief that the legislature identified what “board approval” means and then utilized that “board approval” and “approval date” throughout chapter 418 as a terms of art. *See* Iowa Code section 418.9 (discussing the board approval process). In this respect, section 418.9(4) specifically directs that the board must review submitted applications and “shall approve, defer, or deny the applications.” (emphasis added). *See also Walnut Brewery, Inc. v. Iowa Dep’t of Commerce—Alcohol Beverages Div.*, 775 N.W.2d 724, 732 (Iowa Ct. App. 2009) (noting that “shall” imposes a duty). It stands to reason that the date of board approval under section 418.9(4) constitutes the board approval date.

Understanding the concerns raised in the above-referenced letter, I contemplated other vehicles to alleviate this issue (*e.g.*, perhaps framing the board’s initial approval as a “contingent approval” with final board approval being withheld until the bond date); however, I question whether these options would be permissible in light of the clear direction within section 418.9(4) that the board “approve, defer, or deny” submitted applications.

Ultimately, a statutory change would be the most effective means of addressing this concern. With that said however, I am certainly willing to further consider and evaluate this issue with all interested parties.

In conclusion, please note, that the analysis set forth herein is in my own and that this is not an opinion of the Attorney General. Please feel free to contact me should you wish to discuss this issue further.