

To: Board of Directors, North Prairie Regional Water District
From: Monte L. Rogneby
Date: August 15, 2024
Re: Water Cents Stipend Program

President Krueger requested I overview the North Prairie Regional Water District's ("District") Water Cents Stipend Program ("Program") and provide the Board recommendations concerning its continued operation by the District. It is my opinion that there are open legal questions concerning the District's authority to operate the Program which should be resolved by the District.

It is my recommendation that the Board consider the following actions at its August 20, 2024, meeting:

1. Suspend collection of all contributions to the Program;
2. Suspend all new expenditures from the Program; and
3. Authorize me to seek an Attorney General's opinion concerning at least the following issues:
 - 1) Status of funds collected through the Program; 2) the District's authority to spend the funds for educational stipends or otherwise.

FACTS

1. At the 2012 Annual Meeting of the North Prairie Rural Water District ("Rural District"), the Participating Members adopted a resolution to created an education stipend program (Water Cents) to assist the Rural District find and employ qualified workers. See Exhibits 1 and 2. The resolution created a voluntary contribution of \$1 per month unless a member opted out of the Program, to be used as an education stipend.
2. The Rural District began collecting money for the Program in August 2012. See Exhibit 3.
3. In June 2015, at the Annual Meeting, the Participating Members of the Rural District adopted a resolution modifying the Program to authorize "straight scholarships." The transcript from the meeting includes some discussion concerning the new scholarship authorization but it is not clear what was adopted because the motion does not contain any details. See Exhibit 4.
4. North Prairie Regional Water District continued the Program after the merger in 2020.

5. It is not clear whether the Boards of either District ever formally adopted any policies to enact the members' resolutions. The District has a one-page description of the Stipend Program and various other written guidelines for the Program, as well as written application materials. See Exhibits 2, 5, and 6.
6. The written description of the Program indicates the Program will be administered by a five member selection committee appointed by the Board President. Three of the members are to be members of the District's Board. Two are to be Members of the District. Exhibit 5.
7. There does not appear to be any meeting records for the Committee, including meeting notices, agendas or minutes.
8. It does not appear that any of the decisions of the Committee were ever brought before either Board of Directors for review and approval, although the financial records for the Program have been provided to the District's Board and the Members. Exhibit 2
9. The Program's financial records indicate the Program made its first education stipend payment in August 2015. The first general scholarship payments were made in August 2016. Exhibit 3.
10. The Program's financial records indicate that in 2020 the Program began making payments to support community events. Exhibit 3. There does not appear to be any written documentation concerning this change in scope of the Program.
11. It appears that the Boards from both Districts did not want to take responsibility for the Program leaving the details of the Program to the General Manager. Exhibit 2.
12. The Program had a fund balance as of July 31, 2024, of \$333,565.22. Exhibit 3.

ANALYSIS

I have completed some preliminary legal research and discussed the Program with representatives of the North Dakota Office of Attorney General. The legal validity of the Program, as currently formed, is not clear. The open legal issues include:

1. Is the District legally authorized to collect voluntary payments from members;
2. If the District is legally authorized to collect voluntary payments from members, may the District do so through an "opt-out" system;
3. Are the funds collected by the District properly categorized as "public funds";
4. If the funds are "public funds" can they be legally expended as part of an education stipend program, a scholarship program and/or to sponsor community events/causes; and
5. If the Program is authorized, what policies and procedures must be adopted by the District to support the Program and what is the Board's proper oversight responsibility.

Until the legal issues are resolved, I recommend the Board suspend the Program by ceasing to collect funds from members and ceasing all new expenditures from the Program's funds. The Program may be obligated to honor any outstanding commitments. Any such commitment should be reviewed and approved by the Board.

It is also my recommendation that the Board determine whether the Program should end either because it is no longer necessary or effective, or so that an alternative program may be created, perhaps using a foundation or other not-for-profit entity. If the Board decides to end the Program, the District still will have to determine the status of the money in the Program and how that money may be used going forward.

Once the Board has provided input on these issues and its intentions, I think the District should obtain an Attorney General's opinion to resolve issues related to the Program and the Program's funds.