

N.D.A.G. Letter to Hanson (Feb. 25, 1987)

February 25, 1987

Mr. Robert E. Hanson
State Treasurer
State Capitol
Bismarck, ND 58501

Dear Mr. Hanson:

Thank you for your letter of January 29, 1987, concerning the State Treasurer's duty under N.D.C.C. § 54-27-15.1 to compile a list of state checks that are more than six years old and remain uncashed and to credit the state's general fund for such amount. You specifically ask whether Teachers' Fund for Retirement (TFFR) annuitant checks that satisfy the criteria of 54-27-15.1 should be credited to the TFFR fund rather than the state's general fund.

N.D.C.C. § 54-27-15.1 states as follows:

54-27-15.1. STATE TREASURER'S CHECKS -- CANCELLATION -- DEPOSIT TO GENERAL FUND. The state treasurer, at the beginning of each fiscal year, shall prepare a list of the checks drawn on various depositories which are more than six years old which remain outstanding and unpaid and shall show the number, date, payee (with address of payee if available), amount, bank on which drawn, and fund against which said check was drawn. A copy of such list shall then be used as an authority for writing a receipt of the total of such check or checks and shall credit such amount to the general fund. One copy of such receipt with list of checks affected shall be provided to the office of management and budget.

N.D.C.C. § 54-27-15.1 does not provide an exemption for checks drawn on special funds such as TFFR. I realize that TFFR is afforded special status in other parts of the North Dakota Century Code and our Constitution. See generally, N.D. Const. Art. X, §12 (provides for a continuing appropriation for "payments required by law to be paid to beneficiaries of the teachers' insurance and retirement fund"); N.D.C.C. § 47-30.1-13 (exempts "unclaimed intangible property held for the owner by a public employee pension program" from the general abandonment provisions); N.D.C.C. § 15-39.1-13 (exempts TFFR annuities and refunds from "attachment, garnishment, execution, or other seizure or process, nor shall they be subject to sale, assignment, pledge, mortgage, or other alienation.") However, nowhere in the constitution or North Dakota Century Code does there exist an exemption for TFFR to the process of N.D.C.C. § 54-27-15.1. It is my opinion, therefore, that the State Treasurer may not credit the amount of outstanding TFFR annuitant checks to the TFFR fund but, rather, must credit such amount to the

state's general fund.

It is also significant to note that the Legislature has provided that the holder of an uncashed check (which has been subjected to the process of N.D.C.C. § 54-27-15.1) may receive payment from the state's general fund by executing a voucher and providing satisfactory evidence of ownership of the check. N.D.C.C. § 54-27-15.4. Thus, the state's general fund remains contingently liable for the amount of the uncashed checks and TFFR bears no further risk.

My response to your first question disposes of the need to answer your second question. If you have any further questions on this matter, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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