

N.D.A.G. Letter to Hanson (Sep. 11, 1987)

September 11, 1987

Honorable Robert E. Hanson
State Treasurer
State Capitol
Bismarck, ND 58505

Dear Mr. Hanson:

Thank you for your letter of August 27, 1987, concerning clearing accounts for state departments or agencies.

N.D.C.C. § 54-06-08.1 allows departments, institutions, or agencies of the state which collect money to maintain clearing accounts. Such accounts must be approved by the director of the Office of Management and Budget, the State Auditor, and the State Treasurer. There is no further statutory language as to the manner in which such approval by these three officials is to be given.

You have inquired as to whether the three officials' approval of the establishment of these clearing accounts may be conditioned upon the satisfaction of certain guidelines set forth by the officials. Furthermore, you have inquired whether approval of a clearing account once provided may be amended or revoked.

The Legislature has obviously intended the three named state officials to exercise their discretion in approving the clearing accounts authorized by statute. The guidelines to be used in providing this approval has been left to the discretion of the named officials. I believe that the three officials would be well within their authority in using the guidelines named in your letter in determining whether to approve the establishment of a clearing account. For example, N.D.C.C. § 54-10-19 provides authority with the State Auditor in supervising all financial accounts of state offices. One would assume that the guidelines of the State Auditor as to state financial accounts would be applicable to clearing accounts established by N.D.C.C. § 54-06-08.1.

Furthermore, the fact that a clearing account has been approved does not prevent the later modification or removal of the approval should the manner in which the account is handled change or no longer be in compliance with the standards and guidelines adopted by the named officials. To allow clearing accounts to escape the continued approval of the statutorily named officials renders the approval requirement useless and a mere formality.

In summary, clearing accounts can only exist if they are established pursuant to N.D.C.C. § 54-06-08.1. As part of the statutory requirements for the establishment of clearing accounts, they must be approved by the three named state officials. In determining whether approval should be granted, these officials are free to establish guidelines as to

the manner in which these accounts are to be handled. The officials may continue to review the accounts and, if appropriate, revoke or amend the original approval.

Sincerely,

Nicholas J. Spaeth

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