

N.D.A.G. Letter to Schuetzle (May 7, 1990)

May 7, 1990

Mr. Tim Schuetzle
Director
Roughrider Industries
Box 5521
Bismarck, ND 58502-5521

Dear Mr. Schuetzle:

Thank you for your February 20, 1990, letter. You ask whether any statutes would prevent Roughrider Industries from drawing moneys appropriated to it from the State Treasury, depositing such moneys in a checking account to be maintained at the Bank of North Dakota in the name of Roughrider Industries, and writing its own checks on this account.

N.D. Const. art. x, § 12(1) provides generally that all public moneys received by a state agency must be paid monthly to the State Treasurer and deposited to the credit of the state, and may be paid out and disbursed only pursuant to legislative appropriation. N.D. Const. art. X, § 12(2) also provides that no bills can be paid until a full itemized statement is filed with the officer whose duty it is to "audit the same" and "then only upon warrant drawn upon the treasurer of such funds by the proper officer or officers."

Public moneys belonging to or in the custody of the state must be deposited in the Bank of North Dakota. N.D.C.C. §§ 6-09-07 and 21-04-02. The State Treasurer may pay public moneys out of the State Treasury only upon warrants drawn by the Office of Management and Budget and signed by the State Auditor. N.D.C.C. § 54-11-01(4). N.D.C.C. § 54-27-08 provides that

[e]xcept as otherwise provided, moneys may be paid from the state treasury only upon the warrant or order prepared by the office of management and budget drawn on the state treasurer When such order and warrant-check is signed by the state auditor, the state treasurer shall accept the order or warrant with his signature, making the order and warrant-check negotiable. No warrant upon the treasurer may be delivered or mailed to the payee or his agent or representative until the warrant has been signed by the treasurer and entered on the treasurer's books as a check drawn on a bank depository.

If there is money in the state treasury appropriated for the purpose, the State Treasurer may then "redeem" the warrant. N.D.C.C. § 54-11-01(9).

The State Treasurer's duties include receiving and keeping moneys of the state not required to be received and kept by someone else. N.D.C.C. § 54-11-01(1). The State

Treasurer's duties also include delivering to each person from whom moneys are received and to the Office of Management and Budget, a duplicate receipt showing the amount and source of the moneys and the funds into which the moneys are paid. N.D.C.C. § 54-11-01(3).

The director of the Office of Management and Budget is generally charged with managing the finances of the state. N.D.C.C. § 54-44-04. The director of the Office of Management and Budget also serves as the director of the budget. N.D.C.C. § 54-44.1-02. Acting as the director of the Office of the Budget, the director of the Office of Management and Budget is responsible for processing all claims for submittal to the Office of Management and Budget for the preparation of warrants for payment of such claims. N.D.C.C. § 54-44-04(9). The director of the budget is also responsible for exercising continual control over the execution of the budget affecting state government, with the exception of the legislative and judicial branches. N.D.C.C. § 54-44.1-03(5). This control includes analysis and approval of all commitments by the departments and agencies of state government for conformity with the program provided in the state's budget, frequent comparison of actual revenues and budget estimates, and control of the rate of expenditure through a system of allotments. Id.

Roughrider Industries is a prison industry established by the warden of the State Penitentiary. N.D.C.C. § 12-48-03.1. I am not aware of any statute which would provide for the treatment of Roughrider Industries other than as a part of the State Penitentiary. I also am not aware of any statute authorizing the warden to expend funds in a manner other than pursuant to a warrant signed by the State Treasurer. Roughrider Industries, therefore, has the same status and is subject to the same statutes with regard to the expenditure of moneys as other state agencies.

N.D.C.C. § 54-06-08.1 authorizes state agencies, with the approval of the State Auditor and State Treasurer, to maintain an account at the Bank of North Dakota with "such reasonable minimum balance as may be necessary for clearing or cashing of checks and making change." These petty cash funds are still "subject to the constitutional requirement that funds be paid over monthly to the state treasurer." 1975 N.D. Op. Att'y Gen. 74, 76. N.D.C.C. § 54-06-08.1 does not authorize a state agency or institution to write checks off the petty cash account. N.D.C.C. § 54-06-08.1, then, does not authorize the type of account you propose in your letter.

Therefore, based upon the foregoing analysis, it is my opinion that Roughrider Industries may not remove its cash from the state treasury, deposit the moneys in a separate checking account at the Bank of North Dakota, and write its own checks on this account.

I hope that this letter is responsive to your questions. If not, or if you have additional questions, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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