

**N.D.A.G. Letter to Hanson (Nov. 4, 1991)**

November 4, 1991

Honorable Robert E. Hanson  
State Treasurer  
State Capitol  
Bismarck, ND 585~5

Dear Mr. Hanson:

Thank you for your October 16, 1991, letter in which you request information regarding the disposition of excess funds in the state aid distribution fund at the end of a biennium.

North Dakota Century Code § 54-44.1-11 directs the Office of Management and Budget to cancel appropriations which are not expended at the end of each biennium. Therefore, money which has been appropriated, but which has not been spent, is no longer available after the end of the biennium, with some exceptions not relevant here. The excess moneys may not be expended until they are reappropriated. "[N]o money may be drawn from the treasury, except by appropriation made by law as required by section 12 of article X of the Constitution of North Dakota." N.D.C.C. § 54-44.1-09.

N.D.C.C. § 57-39.2-26.1 requires that "a portion of sales, use and motor vehicle excise tax collections . . . must be deposited by the state treasurer in the state aid distribution fund." While unexpended appropriations out of this fund are cancelled at the end of each biennium, the fund itself continues. Moneys deposited into the fund remain in the fund until expended pursuant to an appropriation. Since the exact amount of receipts is dependent upon the amount of tax collected, which varies, it is unlikely that the amount received will ever exactly equal the amount appropriated and expended. Unappropriated funds, including those previously appropriated and cancelled at the end of the biennium, remain in the fund and may not be disbursed until reappropriated.

The law is not completely silent regarding the excess moneys in the State Aid Distribution Fund. Section 2 of 1991 N.D. Sess. Laws ch. 39 states the intent of the Legislature to treat excess moneys in the fund as a deficiency appropriation to political subdivisions. This intent, however, does not act as an appropriation. The actual appropriation by the next Legislature may differ from the intent manifested in 1991 N.D. Sess. Laws ch. 39, § 2. Similar language appeared in 1989 N.D. Sess. Laws ch. 17, § 4.

You further ask whether the moneys in excess of appropriations in the state aid fund may be disbursed in the next scheduled distribution of state revenue sharing and personal property tax replacement. No expenditure of state funds may be made except pursuant to appropriation. N.D.C.C. § 57-39.1-26.1 provides that the "state aid distribution fund must be allocated, subject to legislative appropriation." This language does not denote a revolving fund or continuing appropriation. The appropriations from the fund have been in

specific amounts for specific bienniums. 1989 N.D. Sess. laws ch. 17, § 1, and 1991 N.D. Sess. Laws ch. 39, § 1. However, if moneys in the fund are appropriated to be disbursed in the next scheduled distribution of state revenue sharing and personal property tax replacement, then they may be expended as such.

I trust this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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