

**OPINION
69-329**

August 1, 1969 (OPINION)

Honorable Curtis Olson

Auditor

RE: State - Board of Pharmacy Funds - Deposit with State Treasurer

This is in reply to your letter of July 2, 1969, relative to Section 43-15-11 of the North Dakota Century Code, governing funds of the State Board of Pharmacy. You state the following:

We contend that the law is quite clear with regard to the requirement that all moneys collected by the Board of Pharmacy are to be deposited with the State Treasurer. However, the Board presently deposits all funds with a Bismarck bank and has followed this practice for many years.

Counsel for the Board argues that the past procedure for handling funds has been based on the provisions of Section 43-15-05 (N.D.C.C.). It is their contention that we have two squarely conflicting sections and that Section 43-15-05 dates back to 1890, while Section 43-15-11 was enacted in 1943. The Board has requested that an Attorney General's opinion be obtained so that this matter may be resolved.

Therefore, we would like to know whether our interpretation of Chapter 43-15 requiring all funds collected by the Board to be deposited with the State Treasurer is correct or whether the Board is allowed by law to continue their present practice of depositing all funds in a Bismarck bank."

Section 43-15-11 of the North Dakota Century Code provides as follows:

43-15-11. FEES DEPOSITED WITH STATE TREASURER - SEPARATE FUND - VOUCHERS. All moneys and fees collected or received by the board under the provisions of this chapter shall be deposited with the state treasurer who shall keep the same in a separate fund continued from year to year to be drawn against only for the expenses of the board. Such moneys shall be disbursed only on warrants signed by the president and the secretary drawn upon said funds in the hands of the state treasurer."

Section 43-15-05 of the North Dakota Century Code provides:

COMPENSATION OF BOARD - DISPOSITION OF FEES. Each member of the board shall receive a per diem of twenty dollars for attendance at board meetings, and all actual and necessary expenses incurred in attending such meetings and in performing other official duties. The mileage and travel expense allowed shall not exceed the amount provided for in section 54-06-09. The per diem and expenses shall be paid only from moneys received by the board under the provisions of this chapter.

Any moneys remaining after the payment of the per diem and expenses herein provided for shall be held by the treasurer of the board as a special fund to meet the expenses of the board and of the reports and annual meeting of the North Dakota pharmaceutical association, and such other necessary expenses as may be incurred by the association."

If Section 43-15-05 were the only provision relating to the disposition of fees, the question would still remain, "Where would such funds be held?" The statute provides that the funds "* * *" shall be held by the treasurer of the board as a special fund." This language does not indicate where such funds shall be deposited. We could refer to other provisions of law, such as Chapter 21-04, to arrive at the intent of this section, but this is not necessary in the present matter.

In this instance, we must also recognize the provisions of Section 43-15-11, which are clear and unambiguous. Both of these sections existed when the North Dakota Century Code was adopted. For that matter, the North Dakota Century Code was adopted by a bill which, in essence, recited all of the provisions of the Code. We believe that Section 43-15-05 can be reconciled with Section 43-15-11.

It is, therefore, our opinion that the fees collected and received by the Board under the provisions of Chapter 43-15 shall be deposited with the State Treasurer and that same can be withdrawn as provided for in Section 43-15-05, and for the purposes listed thereunder.

HELGI JOHANNESON

Attorney General