

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 81-6

Date Issued: February 3, 1981

Requested by: Industrial Commission

- QUESTION PRESENTED -

Whether the Bank of North Dakota can transfer its future undivided profits from time to time to the community water facility loan fund established under section 6-09.5-03 of the North Dakota Century Code to a maximum amount of ten million dollars without a specific authorization from the Legislature beyond the initial five million dollars appropriated.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that it was the specific intent of the Legislature that under section 6-09.5-03, N.D.C.C., the Bank of North Dakota cannot transfer its undivided future profits from time to time to the community water facility loan fund to a maximum total of ten million dollars without a specific additional appropriation from the Legislature beyond the initial five million dollars appropriated.

- ANALYSIS -

Section 6-09.5-03, N.D.C.C., states:

A community water facility loan fund with an authorized ceiling of ten million dollars is hereby established from the future undivided profits of the Bank of North Dakota. This shall be a revolving fund, and all moneys transferred into the fund, interest upon fund moneys, and collections of interest and principal on fund loans shall be used for the purposes of this chapter.

In House Bill 1018, the legislation that became section 6-09.5-03, N.D.C.C., a specific schedule was established as follows:

Five million dollars from the future undivided profits of the Bank shall be transferred to the fund through quarterly transfers of one million two hundred fifty thousand dollars on each of the following dates: July 1, 1978; October 1, 1978; January 1, 1979; and April 1, 1979.

The Community Water Facility Loan Act was enacted as Chapter 81 of the Session Laws of the Forty-fifth Session of the Legislative Assembly and took effect on July 1, 1977. The above-listed schedule for the transfer of moneys from the future undivided profits of the Bank to the revolving fund was enacted as a part of Section 3 of the Act but now appears as a note to section 6-09.5-03, N.D.C.C.

The manner in which public moneys are to be paid out and disbursed is governed by Section 186 of the North Dakota Constitution, as amended, which provides as follows:

(1) All public moneys, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the State receiving the same, to the State Treasurer, and deposited by him to the credit of the State, and shall be paid out and disbursed only pursuant to appropriation first made by the Legislature; provided, however, that there is hereby appropriated the necessary funds required in the financial transactions of the Bank of North Dakota, . . . (Emphasis supplied).

The North Dakota Supreme Court stated in Menz v. Coyle, 117 N.W.2d. 290 (N.D. 1962):

This court has also held that, in all cases that fall within Section 186 of the Constitution, all fees collected for a statewide public purpose, by authority of the law, may be spent only pursuant to legislative appropriation.

. . . The Legislative Assembly must make specific and direct appropriations of the amounts to be expended . . . and specify the purpose for which the same shall be expended, . . . Langer v. State, 69 N.D. 129, 284 N.W. 238. 117 N.W.2d. 290, 302.

The North Dakota Supreme Court concluded:

. . . That 'an appropriation,' as the word is used in Section 186 of the Constitution, is the setting apart of a definite sum for a specific object in such a way that the public officials can use the amount appropriated, and no more than the amount appropriated. Campbell v. Towner County, 71 N.D. 616, 3 N.W.2d. 822. 117 N.W.2d. 290, 302.

The community water facility loan fund is not an ordinary part of the ongoing business of the Bank of North Dakota, but rather it is a specific program established by the Legislature. In section 6-09.5-03, N.D.C.C., the Legislature established the community water facility loan fund through the Bank of North Dakota with a ceiling of ten million dollars. If the Legislature viewed the community water facility loan fund as a part of the routine "financial transactions" of the Bank of North Dakota, it arguably would not have made a partial appropriation in the first instance. It could simply have left the Bank of North Dakota to transfer future undivided profits to the fund from time to time to a maximum of ten million dollars. However, the Legislature did appropriate five million dollars from the Bank's future undivided profits beginning on July 1, 1978, and ending on April 1, 1979. Accordingly, the legislative intent is apparent and must be given great weight. Therefore, the additional five million must be appropriated by the Legislature either in total or in a similar installment plan such as that used for the first five million dollar transfer.

In reviewing the May 18-19, 1976, minutes of the Interim Agriculture Committee concerning House Bill 1018, the intent of the Legislature is clearly shown. In discussing the initial five million dollar appropriation, Representative Ruth Meiers, an interim committee member, asked whether a five million dollar transfer would be sufficient. Mr. Neil Modin of Farmers Home Administration felt that it was a reasonable amount and that if the legislation became a reality, further appropriations could be made to the fund. Mr. H. L. Thorndal of the Bank of North Dakota, stated that if the five million were appropriated and the total amount was loaned out during the biennium, that there would be a request for additional funds. Likewise, if only one million dollars had been loaned out the Legislature might assess the situation and conclude that there is too much money in the fund. It appears that the first five million dollars appropriated under section 6-09.5-03, N.D.C.C., will be depleted in the very near future. This reflects the fact that the first five million dollars has lasted for two bienniums. As Mr. Thorndal suggested during the interim committee meetings, our Legislature may want to look into that fact in considering an appropriation of the additional five million dollars for the next biennium. Alternatively, they may wish to consider amending section 6-05.9-03, N.D.C.C., to provide for a standing appropriation to the community water facility loan fund.

- EFFECT -

This opinion is issued pursuant to Section 54-12-01 of the North Dakota Century Code which governs the actions of public officials until such time as the question presented is decided by the courts.

Robert. O. Wefald
Attorney General

Prepared by: DeNae H. M. Kautzmann
Assistant Attorney General