

LETTER OPINION
93-L-279

September 23, 1993

Honorable Kathi Gilmore
State Treasurer
State Capitol
Bismarck, ND 58505-0600

Dear Kathi:

Thank you for your September 15, 1993, letter requesting my opinion about your responsibility to transfer money to the regional rural development revolving loan fund pursuant to House Bill 1046 of the 1991 Legislative Assembly. (1991 N.D. Sess. Laws ch. 130).

Sections 8 and 9 of chapter 130 and section 47 of chapter 95 of the 1991 Session Laws contain the language applicable to your responsibility concerning the regional rural development revolving loan fund. Section 8 of chapter 130 was amended by section 47 of chapter 95 and therefore I will make reference only to "section 47" and "section 9" for purposes of this discussion.

In section 47 the Legislature appropriated an amount not to exceed "the sum of \$9,500,000 [to] be transferred by the state treasurer to the regional rural development revolving loan fund." 1991 N.D. Sess. Laws ch. 95, ? 47. Section 9 provides that the appropriation established by section 47 is available only if the Director of the Office of Management and Budget determines that "estimated general fund revenues for the biennium ending June 30, 1993, are greater than the estimates that were made at the close of the fifty-second legislative assembly." 1991 N.D. Sess. Laws ch. 130, ? 9. Section 9 further directs the Director of the Office of Management and Budget to "inform the equity development corporation of the appropriation available to it." Id.

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In section 9 the Director of the Office of Management and Budget is charged with the responsibility of determining the existence of several facts. It is his responsibility to ascertain whether the "estimated general fund revenues for the biennium ending June 30, 1993, are greater than the estimates that were made at the close of the fifty-second legislative assembly"; whether money is available in excess of the benchmark set by the Legislature; and what amount is available to be transferred. Only when the Director determines appropriate facts are present are the legislative criteria establishing the appropriation met. At that point the Director must notify the equity development fund (the Future Fund, Inc.) of the availability of the funds.

Once the Director makes the determination, the legislative directive to you is that the funds "shall be transferred" to the regional rural development revolving loan fund. 1991 N.D. Sess. Laws ch. 95, § 47. This language gives you no discretion, but imposes upon you the responsibility to perform a purely ministerial act. You violate no law by performing that act, regardless of whether the Director has properly made the required determinations. Johnson v. Baker, 21 N.W.2d 355, 362 (N.D. 1945).

In this case, the Director of the Office of Management and Budget has notified you of the amount he has determined is available to be transferred. The Director is presumed to have followed the law when he reached this determination. N.D.C.C. § 31-11-03(15). Your responsibility is fulfilled if you transfer the money earmarked by the Director to the regional rural development revolving loan fund even though you have not inquired into the underlying facts on which the Director of the Office of Management and Budget has based his determination. By complying with the statutes discussed above, you will have kept and disbursed moneys belonging to the state in the manner provided by law. N.D.C.C. § 54-11-01(15).

I trust this answers your questions. If you have

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other questions concerning this matter, please feel
free to contact me again.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

rms/vkk