

**LETTER OPINION
2002-L-29**

May 10, 2002

Honorable Robert R. Peterson
State Auditor
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Peterson:

Thank you for your letter asking several questions about the relationship between statutes relating to funds under the control of the Veterans' Home and budgeting and fiscal policies of the Office of Management and Budget (OMB).

Section 37-15-14, N.D.C.C., provides as follows:

A special fund, to be known as the veterans' home operating fund, must be maintained in the state treasury. Moneys arising from the interest received on money derived from the sale of lands appropriated for the support of the home and from the rental of such lands, moneys received from the United States for the support and maintenance of the home, and all other moneys, income, and collections of public funds arising from any other source or endeavor of the home, except as provided for in section 37-15-21, must be placed in the veterans' home operating fund for the use and maintenance of the veterans' home. Moneys derived from the general fund appropriation made by the legislative assembly must be transferred periodically to the veterans' home operating fund upon order of the director of the office of management and budget whenever the operating fund's balance requires supplementation.

The OMB is vested with control and supervision of the fiscal administration of the executive branch of state government. It has the powers necessary to supervise and administer the fiscal transactions of the state departments, agencies, boards, and commissions. N.D.C.C. §§ 54-44-01, 54-44-02. Within the OMB, the office of the budget is established for the purpose of promoting economy and efficiency in the fiscal management of state government. N.D.C.C. § 54-44.1-02.

Agencies are required to submit budget estimates to the office of the budget which prepares budget data based thereon. N.D.C.C. §§ 54-44.1-04, 54-44.1-06. Following the enactment of appropriations measures, the office of the budget exercises continual control over the execution of the budget affecting the departments and agencies of state government. N.D.C.C. § 54-44.1-12.

Concerning the relationship between OMB fiscal policies and statutes relating to the board of higher education, this office opined:

Thus, . . . OMB policies which purport to direct or control the manner in which public monies are to be administered need not be followed by the Board when there is an express statutory exception.

Letter from Attorney General Nicholas Spaeth to Edwin J. Nagel, Jr. (Apr. 7, 1992).

Based on the above discussion of applicable law, my opinion with respect to your questions is as stated below. Federal funds received by the Veterans' Home must be deposited in the Veterans' Home operating fund pursuant to N.D.C.C. § 37-15-14, as well as N.D.C.C. §§ 37-15-13 and 37-15-21. Any OMB budgeting policies in conflict with these sections do not override the specific statutory enactments.

The last sentence of N.D.C.C. § 37-15-14 generally requires non-general fund money to be spent first and to be supplemented by general fund appropriations when the director of OMB determines supplementation is required. This is, as stated, a general requirement because it is conceivable that federal funds or other forms of revenue to the Veterans' Home, such as gifts, grants, or donations, may have limitations applicable to them concerning the manner and the purposes for which they may be spent. See N.D.C.C. § 37-15-21. Thus, OMB will need to consider those spending limitations in the exercise of its discretion as to when the Veterans' Home operating fund needs to be supplemented.

In your request you quote a portion of N.D.C.C. § 37-15-14 regarding moneys received from the United States for the support and maintenance of the home. You ask whether this language or other provision of the Century Code requires the Veterans' Home to spend moneys in what you call "their federal fund (002)" before spending state general funds. Section 37-15-14, N.D.C.C., requires federal funds received for the support and maintenance of the Home to be deposited in the Veterans' Home operating fund. From your description, it appears federal funds received for that purpose may have been diverted to another fund, but the requirement for spending non-general fund money first, as described above, continues to apply.

If the Legislature identifies a project, position or other purpose for which it intends that state general funds be devoted, then it may provide accordingly through exceptions to the general rule stated in N.D.C.C. § 37-15-14. It may do so either by permanent law in the Century Code or by specific direction contained in appropriations measures concerning the Veterans' Home contained in the session laws. This process creates an exception to the general rule, and is not an uncommon procedure for the Legislature to use.

The procedures required by N.D.C.C. § 37-15-14 may be at variance with the standard budgeting and appropriations processes in place for state government. Depending on the current appropriations for the Veterans' Home, it may be necessary for the agency to seek Emergency Commission action to transfer funds between line items, N.D.C.C. § 54-16-04, and the agency should work with the OMB in that process. Also, to avoid what may be unnecessary steps in its budgeting and expenditure process, the Veterans' Home may wish to review the requirements of N.D.C.C. ch. 37-15 and seek legislation at the next legislative session that brings its process into step with current practices.

Sincerely,

Wayne Stenehjem
Attorney General

rel/pg

cc: Ken Anderson, Commandant, North Dakota Veterans' Home
Rod Backman, Director, Office of Management and Budget