

**LETTER OPINION
2004-L-67**

November 4, 2004

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

Dear Mr. Peterson:

Thank you for your letter asking whether a state officer¹ is limited to spending line item money transfers approved by the Emergency Commission only for the purpose outlined in the agency's² itemized, verified petition. For the reasons stated below, it is my opinion that a state officer is limited to spending line item money transfers approved by the Emergency Commission only for the purpose outlined in the agency's itemized, verified petition.

ANALYSIS

Chapter 54-16, N.D.C.C., outlines the Emergency Commission's duties. It also outlines the procedure for an agency to follow when making a request to the Commission to transfer or spend funds when an "emergency" arises. An "emergency" is defined as a "calamity or an unforeseen happening subsequent to the time the appropriation was made and which was clearly not within the contemplation of the legislative assembly and the governor." N.D.C.C. § 54-16-00.1(1).

A request can be made to the Emergency Commission in four main instances: 1) to request approval to transfer money and spending authority between funds or line items; 2) to accept and expend federal funds; 3) to accept and expend other funds; or 4) to transfer and expend state contingency funds. See N.D.C.C. §§ 54-16-04, 54-16-04.1, 54-16-04.2, and 54-16-09. Regardless of the nature of the request, the state officer must "present . . . an itemized, verified petition requesting approval . . ." to the Emergency Commission. N.D.C.C. § 54-16-03.1 (emphasis added).

Section 1-02-02, N.D.C.C., states "[w]ords used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears" An ordinary

¹ "State officer" means an elected or appointed officer, board, commission, director, or employee of the state having the authority to transfer or expend any money appropriated by the legislative assembly." N.D.C.C. § 54-16-00.1(2).

² For the purposes of this opinion, "state agency" includes "state agencies, departments, and institutions" as used in N.D.C.C. § 54-10-01.1.

definition of the word “itemized” is “having each item separately listed” or “to list things separately, often including details about each thing.” Wordsmyth (2002), available at <http://www.wordsmyth.net> and Cambridge Advanced Learner’s Dictionary (2004), available at <http://dictionary.cambridge.org>. Therefore, the requesting state officer must separately list, in detail, each item needed due to some type of calamity or unforeseen happening. Requests are generally made to the Emergency Commission using SFN 02580(1-00).³

At a recent Emergency Commission meeting, seven requests were made. Each petition itemized the exact reason for which the money was requested, detailed how the funds would be transferred or made available, and stated the line item into which the money should be transferred. In addition, each petition included a narrative detailing exactly how the requested funds would be used. For example, one agency requested an allocation to its operating line item to purchase a new computer system due to lack of the availability of technical support for the existing system, as well as its incompatibility with the state’s current operating system. See Request to Emergency Commission, Request No. 1521 (Sept. 14, 2004). Because the Legislature required the state officer to submit an itemized petition, it seems unlikely the Legislature would have intended that once funding for this new, specific type of computer system was received it could be used for any purpose within the operating line item⁴ at the agency’s sole discretion. In the petition, the agency stated that it had an “emergency” need for a new computer system. If the money approved for this purpose was used for a different purpose, then either there was no “emergency,” in which case the funds should not have been approved by the Emergency Commission, or a new emergency occurred, in which case a new itemized, verified petition should have been presented to the Emergency Commission.

Section 54-16-03.1, N.D.C.C., does not specifically state that the requesting agency must use the funds approved by the Emergency Commission for those items stated in its “itemized, verified petition.” If, however, the agency could use the funds for any purpose, then the compilation of the “itemized, verified petition” would be an idle or unnecessary act. “A statute must be construed to avoid absurd and ludicrous results or to require idle or unnecessary acts.” Larson v. Wells County Water Res. Bd., 385 N.W.2d 480, 482 (N.D. 1986).

In addition, N.D.C.C. § 54-10-01.1 requires your office to “review the expenditure of funds transferred or made available by the emergency commission” to state agencies and N.D.C.C. § 54-10-01(1) requires your office to determine “that expenditures have

³ SFN 02580 (1-00) is available at <http://www.state.nd.us/eforms/Doc/sfn02580.pdf>.

⁴ The operating line item contains expenditures as diverse as travel, rent, and professional development. See Office of Management and Budget Expenditure Object Codes (Sept. 24, 2004), available at <http://www.state.nd.us/fiscal/docs/ expendcodes.pdf>.

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been made in accordance with law and appropriation acts.” If the requesting agency could spend the funds received from the Emergency Commission for any purpose within a certain line item, it would be absurd, or at least unnecessary, for the auditor’s office to review the specific expenditures transferred or made available. Again, a statute must be construed to avoid absurd and ludicrous results or to require idle or unnecessary acts. Larson v. Wells County Water Res. Bd., 385 N.W.2d at 482.

Sincerely,

Wayne Stenehjem
Attorney General

njl/vkk

This opinion is issued pursuant to N.D.C.C. §54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).