

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 97-01

Date Issued: January 7, 1997

Requested by: Kathi Gilmore, State Treasurer

- QUESTIONS PRESENTED -

I.

Whether the principal balance of the Veterans' Postwar Trust Fund created by Initiated Constitutional Measure #4 is the amount of the principal balance of the statutorily-created Veterans' Postwar Trust fund on the effective date of the initiated measure or whether it is that principal balance plus any accumulated income earned by the statutorily-created trust fund.

II.

Whether Initiated Constitutional Measure #4 affects existing legislative appropriations of income earned by the Veteran's Postwar Trust Fund.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that the principal balance of the Veterans' Postwar Trust Fund created by Initiated Constitutional Measure #4 consists of the principal balance of the statutory Veterans' Postwar Trust Fund on December 5, 1996, and any moneys transferred or credited to the Fund by future legislative enactments, but does not include income earned by the Fund unless that income is transferred or credited to the principal balance of the fund.

II.

It is my opinion that the income earned on the principal balance of the Veterans' Postwar Trust Fund before the effective date of Initiated Constitutional Measure #4 is subject to legislative appropriation; however, income earned after the effective date of Initiated Constitutional Measure #4 is subject to that measure and is not subject to legislative appropriation.

- ANALYSES -

I.

On November 5, 1996, the electorate approved a new section to Article X of the Constitution of the State of North Dakota. The new section states:

The veterans' postwar trust fund shall be a permanent trust fund of the state of North Dakota and shall consist of moneys transferred or credited to the fund as authorized by legislative enactment. Investment of the fund shall be the responsibility of the state treasurer who shall have full authority to invest the fund only in the same manner as the state investment board is authorized to make investments. All income received from investments is to be utilized for programs which must be of benefit and service to veterans, who are defined by legislative enactment, or their dependents, and such income is hereby appropriated to the administrative committee on veterans' affairs on a continuing basis for expenditure upon those programs selected at the discretion of the administrative committee on veterans' affairs.

This constitutional amendment became effective 30 days after the election. North Dakota Constitution Art. III, §§ 8, 9; see generally 1989 N.D. Op. Att'y Gen. 63. Initiated Constitutional Measure Number 4 is therefore effective from the first moment of December 5, 1996. N.D.C.C. §§ 1-01-33, 1-02-15.

The Veterans' Postwar Trust Fund referred to by Initiated Constitutional Measure #4 has an identical name and is in a measure worded almost identically to an existing statute creating a Veterans' Postwar Trust Fund. N.D.C.C. § 37-14-14. General principles of statutory construction are applied when construing constitutional provisions. State v. City of Sherwood, 489 N.W.2d 584, 587 (N.D. 1992); McCarney v. Meier, 286 N.W.2d 780, 783 (N.D. 1979). Words and phrases used in statutes are to be understood in their ordinary sense, but words or phrases may be construed by their definition in similar statutes. Larson v. Baer, 418 N.W.2d 282, 289 n.7 (N.D. 1988); State v. Johnson, 417 N.W.2d 365, 369 (N.D. 1987). "Statutory provisions that are substantially the same as previously existing statutes are construed as continuations thereof." State ex rel. Sprynczynatyk v. Mills, 523 N.W.2d 537, 540 (N.D. 1994). Therefore, the Veterans' Postwar Trust Fund referred to by Initiated

Constitutional Measure #4 is the same Veterans' Postwar Trust Fund created by N.D.C.C. § 37-14-14.

Initiated Constitutional Measure #4 states that the principal of the Veterans' Postwar Trust Fund "shall consist of moneys transferred or credited to the fund as authorized by legislative enactment." N.D.C.C. § 37-14-14 states that the principal of the Veterans' Postwar Trust Fund "shall consist of moneys transferred or credited to the fund, pursuant to the provisions of [chapter 37-14] and of other laws." Initiated Constitutional Measure #4 does not provide for a disposition of income previously earned by the statutory Fund. Therefore, it is my opinion that the principal of the constitutional Veterans' Postwar Trust Fund consists of the balance of the statutory Veterans' Postwar Trust Fund on December 5, 1996, and any moneys which are transferred or credited to the Fund by future legislative enactments, but does not include income earned by the Fund unless that income is transferred or credited to the principal balance of the fund. It is my understanding that all additions to the Fund required by previous legislative enactments were transferred or credited to the Fund before the effective date of Initiated Constitutional Measure #4. Therefore, it is my further opinion that the principal balance of the constitutional Veterans' Postwar Trust Fund, in the absence of future legislative enactments adding to the principal balance of the Fund, is the principal balance of the statutory Fund on December 5, 1996.

II.

The Legislature has made several appropriations of income from the statutory Veterans' Postwar Trust Fund for the 1995-1997 biennium. See, e.g., 1995 N.D. Sess. Laws chs. 9, 51. However, upon the effective date of Initiated Constitutional Measure #4, the income from the Veterans' Postwar Trust Fund "is hereby appropriated to the administrative committee on veterans' affairs on a continuing basis for expenditure upon those programs selected at the discretion of the administrative committee on veterans' affairs." This new measure creates a constitutional appropriation of the income earned by the Fund. 1993 N.D. Op. Att'y Gen. 45. This constitutional provision limits the Legislature's authority and implicitly prohibits a contrary appropriation of the Fund's income. See 1987 N.D. Op. Att'y Gen. 65. Therefore, it is my opinion that income which was earned by the Veterans' Postwar Trust Fund before December 5, 1996, is subject to legislative appropriation because it was earned before Initiated Constitutional Measure #4 took effect, but income earned by the Fund on or after December 5, 1996, may only be spent on programs selected

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by the Administrative Committee on Veterans' Affairs because that income is subject to Initiated Constitutional Measure #4.

It is possible that passage of Initiated Constitutional Measure Number 4 will create shortages in appropriations made by the Legislature for the 1995-1997 biennium. If this does occur, appropriate action may be taken by the affected agencies, including submitting emergency legislation to the North Dakota Legislative Assembly.

- EFFECT -

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 questions presented are decided by the courts.

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