

**LETTER OPINION**  
**97-L-90**

June 20, 1997

Mr. Kent Reiersen  
Williston City Attorney  
PO Box 1366  
Williston, ND 58802-1366

Dear Mr. Reiersen:

Thank you for your letter asking whether a city insurance reserve fund established under N.D.C.C. § 32-12.1-08 may be used to pay claims arising out of a deficit incurred in the city's self-insured health care fund.

Subsection 2 of N.D.C.C. § 32-12.1-08 describes the permitted uses of a city insurance reserve fund:

Except in the case of a school district, the fund established pursuant to this section shall be kept separate and apart from all other funds and shall be used only for the payment of claims against the political subdivision which have been settled or compromised, judgments rendered against the political subdivision for injuries arising out of risks established by this chapter, or costs incurred in the defense of claims. Payments by a school district for the same purposes shall be made out of the district's general fund as established in section 57-15-14.2.

(Emphasis added).

This office previously determined that funds segregated under N.D.C.C. § 32-12.1-08 may be used to purchase liability insurance. 1995 N.D. Op. Att'y Gen. 96. However, a self-insurance fund created under N.D.C.C. § 32-12.1-08 may not be used to pay premiums for insurance coverage for expenses other than the claims or losses described in N.D.C.C. § 32-12.1-02(1) and (4). Letter from Attorney General Nicholas Spaeth to Fabian Noack (November 2, 1988). Likewise, it is my opinion that funds in a self-insurance fund

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created under N.D.C.C. § 32-12.1-08 may not be used to pay claims other than those described in N.D.C.C. § 32-12.1-02(1) and (4).

I agree with your conclusion that contractual obligations owed by a city to an employee under a self-insured medical plan generally could be considered settled claims. However, as used in N.D.C.C. § 32-12.1-08, the term "claim" has a particular meaning:

"Claim" means any claim permitted by this chapter brought against a political subdivision for an injury caused by a political subdivision or an employee of the political subdivision acting within the scope of the employee's employment or office.

N.D.C.C. § 32-12.1-02(1) (Emphasis added). The term "injury" is defined in subsection 4 of that section:

"Injury" means personal injury, death or property damage. Personal injury includes sickness or disease sustained by any person caused by a political subdivision or an employee thereof.

Although the definition of injury includes sickness or disease, the injury must be caused by the political subdivision or one of its employees. I understand from your letter and a conversation between you and a member of my staff that the employees' medical claims are not caused by the city or another city employee. Therefore, the expenses owed under the city's self-insured medical plan are not "claims" as the term is used in N.D.C.C. § 32-12.1-08.

Because the only permitted use of a self-insurance fund created under N.D.C.C. § 32-12.1-08 is to cover claims for injuries caused by a political subdivision or its employees, it is my opinion that a city may not use the fund to pay expenses arising out of a deficit in the city's self-insured health program.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

jcf/vkk