

## **N.D.A.G. Letter to Omdahl (Jan. 12, 1988)**

January 12, 1988

Honorable Lloyd Omdahl  
Lieutenant Governor  
State Capitol  
Bismarck, ND 58505

Dear Lieutenant Governor Omdahl:

Thank you for your letter of October 15, 1987, inquiring whether the Yellowstone-Missouri-Fort Union Commission may expend \$9,500 of "operating expenses" appropriated by chapter 54 of the 1987 Session Laws for acquisition of real estate with historic significance in the confluence area. You have also asked whether the \$9,500 may be expended for repair and preservation of these structures. Your letter states that you are particularly concerned with several acreages and buildings in the Fort Buford area that are held by private parties.

The Yellowstone-Missouri-Fort Union Commission was charged in 1959 with "investigating . . . the historical importance and significance of the area [presumably the Yellowstone-Missouri-Fort Union area] and for formulating and executing plans for the preservation of the historic sites illustrative of the history of the United States." N.D.C.C. § 55-06-01. (Emphasis added.)

The powers and duties of the Commission are primarily specified in N.D.C.C. § 55-06-02. Such powers and duties include establishing committees, reimbursement of actual expenses incurred by its members, and adoption of rules. With respect to property, N.D.C.C. § 55-06-02 states the Commission may "accept funds, property, and services and other assistance, financial or otherwise, from federal, state, county, municipal, and other public or private sources for the purpose of assisting and promoting its functions." (Emphasis added.) In addition, N.D.C.C. § 55-06-01 states that the Commission has the authority to exercise powers which may be "reasonably implied" from the enumerated powers.

Based on the foregoing, I believe it is a reasonable implication from the Commission's statutory function that it may receive funds and execute plans to restore, preserve, and acquire historic sites in the Fort Buford Missouri-Yellowstone area. However, I do not believe that it would be appropriate to expend state funds on the repair or preservation of properties in private hands unless some method is available for ensuring state access to and use of such properties. See N.D. Const. art. X, § 18, (" . . . neither the state nor any political subdivision thereof shall . . . make donations to or in aid of any individual, association or corporation except for reasonable support of the poor . . . .") I would be happy to consult with you on any details relative to ensuring appropriate protection for the state.

Your main question involves the issue of whether the \$9,500 dedicated to "operating expenses" may be used for purposes proposed in your letter.

A review of the legislative history indicates that the \$9,500 was budgeted by the Commission in its request as follows:

\$8,500	-	other travel, expense pay
200	-	postage
200	-	operating fees and service
400	-	printing
200	-	miscellaneous supplies

other travel, expense pay postage operating fees and service printing miscellaneous supplies

The Office of Management and Budget highlights for this appropriation read as follows:

The 1985-87 operating budget results from a \$2500 grant from the Emergency Commission to fund expenses of appointed and ex-officio members; Vouchers (sic) and bills are being paid directly from the Emergency Commission. The 1987-89 budget request seeks a separate cost center and sufficient funds to pay these same expenses for a full biennium at approved state rates; small additional line items are sought to cover the costs of printing and distributing minutes and agendas, and other miscellaneous commission expenses.

The Commission apparently now believes that these budget allocations should be reallocated for the purpose of repair, renovation, or acquisition of real property to further the purposes of the Yellowstone-Missouri-Fort Union Commission.

Although the Commission would generally be authorized to expend funds for the acquisition, repair, or preservation of structures in the Yellowstone-Missouri-Fort Union area, because the \$9,500 was appropriated specifically for operating expenses, a change in the use of the appropriation would require an order from the Emergency Commission. This order should be requested pursuant to N.D.C.C. § 54-16-04 which provides:

54-16-04. May order transfer of moneys between funds -- Order may draw from the state treasury. Whenever it is made to appear to the emergency commission by an itemized, verified petition of any board, commission, or officer authorized to expend public funds, and after receiving information from the director of the office of management and budget, that an emergency exists, the emergency commission shall assume that an emergency exists and may order money transferred from one fund to another fund belonging to or appropriated from the same institution or board or the same state enterprise, or in an extremity may authorize money to be

drawn from the state treasury to meet the emergency until such time as the legislative assembly can make an appropriation available therefor. The term "emergency" shall be limited to calamities or unforeseen happenings subsequent to the time such appropriation was made and which were clearly not within the contemplation of the legislative assembly and the governor.

N.D.C.C. § 54-16-03 further directs that no state agency:

shall expend, or agree or contract to expend in connection therewith any amount in excess of the sum appropriated therefor, or use an amount appropriated for any specific purpose or fund or for any other purpose without first having secured from the emergency commission an order duly made and entered authorizing such use of the fund.

I hope this resolves your question. I apologize for the delay in responding.

Sincerely,

Nicholas J. Spaeth

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