

N.D.A.G. Letter to Sprynczynatyk (April 3, 1990)

April 3, 1990

Mr. David A. Sprynczynatyk
State Engineer
State Office Building
300 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Sprynczynatyk:

Thank you for your February 15, 1990, letter requesting my opinion on certain issues relating to the resources trust fund and the contract fund. Your first question is whether the State Water Commission is authorized to lend money from either the resources trust fund or the contract fund for water projects. If the State Water Commission has the authority to make loans from these funds, you ask whether the loan repayment proceeds can be deposited back into the respective funds and redistributed by the State Water Commission.

The Water Commission has the authority to "contract and be contracted with." N.D.C.C. § 61-02-09. A loan agreement is a contract and, therefore, N.D.C.C. § 61-02-09 generally authorizes the Water Commission to enter into loan agreements. The crucial issue, therefore, is whether the Legislature has provided specific authority to expend money from either of the two funds for this purpose.

N.D.C.C. § 61-02-64.1 establishes the powers of the Water Commission to administer the contract fund and states as follows:

61-02-64.1. Contract fund -- Purpose -Reimbursements to be deposited with the state treasurer. All contractual obligations of the commission, excepting salaries and expenses of commission employees and the cost of any supplies, materials, and equipment, shall be paid from the contract fund. The moneys in the contract fund shall be paid out or disbursed in such manner as may be determined by the commission. Any moneys paid to the state water commission by any department, agency, or political subdivision of this or another state or of the United States or any person or corporation to meet its part of the cost of a water project, shared with the commission on a matching basis, and as determined by a contract entered into with the commission, shall be deposited with the state treasurer and are hereby appropriated out of the state treasury and shall be credited to the contract fund.

The initial question is whether N.D.C.C. § 61-02-64.1 establishes a continuing appropriation authorizing the Water Commission to continually distribute moneys from the

contract fund. A continuing appropriation would enable the Water Commission to develop the revolving loan fund concept discussed in your letter.

Unlike other statutory continuing appropriations, the Legislature has not indicated a clear intent that the moneys in the contract fund are appropriated on a continuing basis. See Special Funds Continuing Appropriations, prepared by North Dakota Legislative Council Staff for the Budget Committee on Government and Finance (March 1988). Furthermore, as I discuss below, the Legislature has historically transferred moneys to, and made appropriations from, the contract fund on a biennial basis as established in the Water Commission's appropriation act. Therefore, it is my opinion that N.D.C.C. § 61-02-64.1 does not provide a continuing appropriation and that any expenditure from the contract fund must be made pursuant to the Water Commission's 1989-91 Appropriation Act, 1989 N.D. Sess. Laws ch. 23.

1989 N.D. Sess. Laws ch. 23, § 1, contains a line item for "grants, benefits, and claims" in the amount of \$4,802,879. The "grants" line item is to be "disbursed by the commission in accordance with section 61-02-64.1." 1989 N.D. Sess. Laws ch. 23, § 4. As set forth above, N.D.C.C. § 61-02-64.1 governs distributions from the contract fund and, therefore, it appears that the "grants" line item actually constitutes an appropriation from the contract fund. The legislative history of the Water Commission's Appropriation Act also indicates that the "grants" line item is an appropriation of moneys from the contract fund. Hearing on House Bill No. 1024 Before the House Appropriations Committee, 51st Leg. Ass. (Jan. 25, 1989) (written testimony of Vern Fahy, pp. 6-8). It is my opinion, therefore, that the "grants" line item is an appropriation from the contract fund for expenditures during the 1989-91 biennium. It becomes necessary therefore to determine whether the "grants, benefits, and claims" appropriation authorizes distributions from the contract fund for loans.

The "grants" line item authorizes the Water Commission to disburse a specified amount from the contract fund for water-related projects. There is no indication that the Legislature intended to prohibit the Water Commission from disbursing this money in the form of loans. Inasmuch as the Water Commission could decide not to disburse any moneys from the "grants" line item, it is only logical to conclude that the lesser act of making loans, requiring repayment, is also permissible. Therefore, I do not interpret the "grants, benefits, and claims" line item in the Water Commission's Appropriation Act as prohibiting the Water Commission from making loans with the appropriated funds. However, the contract fund is not a revolving loan fund and any amounts disbursed from it in the form of loan proceeds during the 1989-91 biennium must remain within the amount appropriated in the "grants" line item.

Having determined that the Water Commission can lend money from the contract fund up to the amount of the "grants" line item appropriation, it is necessary to determine whether the repayment proceeds may be deposited back into the contract fund. Unless otherwise specified by statute, the State Treasurer deposits all moneys received by the state in the general fund. N.D. Const. art X, § 12.

N.D.C.C. § 61-02-64.1 provides that "any moneys paid to the state water commission by any department, agency, or political subdivision of this or another state or of the United States or any person or corporation to meet its part of the costs of a water project, shared with the commission on a matching basis, and as determined by a contract entered into with the commission . . . shall be credited to the contract fund." Although this statutory language contemplates a situation where the Commission receives money from another entity pursuant to a cost share agreement, it is my opinion that the intent of the statute is to insure that any repayment of moneys originally disbursed from the contract fund are to be deposited back into the contract fund. Therefore, any loan repayment proceeds received by the Water Commission should be deposited in the contract fund. Of course, as I indicated above, this money must be reappropriated by the Legislature for future uses.

The resources trust fund is established in N.D.C.C. § 57-51.1-07 which states, in part, as follows:

The resources trust fund shall be established in the state treasury and the funds therein shall be deposited and invested as are other state funds to earn the maximum amount permitted by law which income shall be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and shall be available to:

- a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02:

(Emphasis supplied.) N.D.C.C. § 57-51.1-07.1 further provides that "[a] political subdivision or rural water system seeking loans, grants, or other financial assistance by legislative appropriation from the resources trust fund for a water-related project or study must submit the proposed water-related project or study to the state water commission for review" (emphasis supplied).

The statutes governing the resources trust fund do not provide a continuing appropriation authorizing the disbursement of money from that fund. In addition, the Water Commission's 1989-91 Appropriation Act, 1989 N.D. Sess. Laws ch. 23, does not provide authority to fund loans directly from the resources trust fund. Therefore, it is my opinion that the Water Commission is not authorized to make loans from the resources trust fund.

I trust that this discussion has been of assistance to you.

Sincerely,

Nicholas J. Spaeth

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