

N.D.A.G. Letter to Hanson (July 6, 1988)

July 6, 1988

Hon. Robert E. Hanson
State Treasurer
Office of State Treasurer
State Capitol
Bismarck, ND 58505

Dear Mr. Hanson:

Thank you for your letter of May 25, 1988, in which you ask whether the State Treasurer may distribute the oil and gas gross production tax to the producing counties and the state's general fund on a basis more frequent than quarterly. In your letter, you indicate that the State Treasurer is currently depositing the state's portion of the oil and gas gross production tax in the state's general fund on a monthly basis. The counties' share is distributed on a quarterly basis. You also indicate that a new computer program has recently been implemented which would make it more efficient if both the distributions to the state and counties could be made on a monthly basis.

In regard to the distribution of the oil and gas gross production tax to the counties, N.D.C.C. § 57-51-14 states that "the state treasurer, quarterly, shall pay over to the county treasurer of the several counties the moneys to which they are entitled hereunder." In interpreting a statute, its words must be given their plain, ordinary, and commonly understood meaning unless a contrary intention plainly appears. N.D.C.C. § 1-02-02. The term "quarterly" is commonly understood to mean four times per year and is not subject to varying interpretations. The only possible argument supporting an interpretation that N.D.C.C. § 57-51-14 permits distributions more frequently than quarterly is that the statute merely establishes a minimum distribution frequency, i.e., quarterly, but does not prohibit more frequent distributions. On its face, N.D.C.C. § 57-51-14 does not reflect such a legislative intent. Nor does its legislative history address this issue. In the absence of a legislative intent that the quarterly distribution scheme established in N.D.C.C. § 57-51-14 merely establishes a minimum payment schedule, but does not prohibit more frequent distributions, it is our opinion that the State Treasurer is not authorized to distribute the oil and gas gross production tax to the counties on any basis other than quarterly.

In your letter, you refer to an Attorney General's opinion issued in the mid-1970's concluding that the State Treasurer could distribute the coal conversion facilities tax on a more frequent basis than that stated in the code. The Attorney General's opinion to which you refer is a letter from then Assistant Attorney General Dale Sandstrom to Walter Christianson dated September 26, 1975. The statute in question was N.D.C.C. § 57-60-14 which provides that "the state treasurer, on or before July fifteenth of each year, shall allocate all moneys received from the coal conversion facilities" in accordance with the provisions of N.D.C.C. ch. 57-60. (Emphasis supplied.)

Assistant Attorney General Sandstrom correctly concluded that N.D.C.C. § 57-60-14 does not specify the distribution frequency but merely requires that the allocation be completed prior to July 15 of each year. Therefore, it was within the discretion of the State Treasurer to make the distributions as frequently as he deemed appropriate so long as the allocation occurred prior to July fifteenth of each year. Because N.D.C.C. § 57-51-14 expressly provides that the oil and gas production tax is to be distributed on a quarterly basis to the counties, the reasoning set forth in the September 26, 1975, letter from Assistant Attorney General Sandstrom to Mr. Christianson is not persuasive in the present context.

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

Sincerely,

Nicholas J. Spaeth

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