

N.D.A.G. Letter to Hoffner (Sep. 19, 1989)

September 19, 1989

Mr. S. F. "Buckshot" Hoffner
Executive Director
ND Centennial Commission
2204 East Broadway
Bismarck, ND 58501

Dear Buckshot:

Thank you for your letter of July 17, 1989, in which you request my opinion concerning the authority granted to the State Forester and the Bank of North Dakota under Senate Bill No. 2114, as enacted by the Fifty-first Legislative Assembly.

This bill provides an appropriation to the State Forester for the purpose of increasing tree seedling production and promoting tree planting for the North Dakota centennial tree program for the 1989-1991 biennium. It also provides that the State Forester may borrow up to \$289,057 from the Bank of North Dakota for the purpose of defraying the expenses of the centennial tree program.

The appropriation to the State Forester from the general fund is for the current biennium, however, the authorization to the State Forester to borrow from the Bank of North Dakota is not limited to the current biennium. Therefore, it is my opinion that unless the authority is eliminated by a future Legislature, S.B. No. 2114 authorizes the State Forester to borrow from the Bank of North Dakota beyond the current biennium if he does not borrow the amount authorized during the current biennium. In other words, once he has borrowed the full amount authorized, he has no further authority to borrow from the Bank.

A more serious question raised by S.B. No. 2114 is whether the State Forester has received an appropriation for the purpose of repaying any amounts he may borrow from the Bank of North Dakota. Although this bill authorizes the State Forester to borrow from the Bank which, by implication, includes the authority to repay, it does not appropriate any moneys to him to repay a loan from the Bank.

N.D. Const. art. X, § 12 provides that public moneys "shall be paid out and disbursed only pursuant to appropriation first made by the legislature..." An appropriation "is the setting apart from the public revenue of a definite sum of money for the specified object in such a manner that the officials of the government are authorized to use the amount so set apart, and no more, for the object." State v. Holmes, 123 N.W. 884, 886-87 (N.D. 1909).

S.B. No. 2114 does not appropriate any moneys to the State Forester for the repayment of a loan from the Bank of North Dakota. It is my opinion that, although the bill authorizes

the State Forester to repay a loan from the Bank, without an appropriation for that purpose the State Forester has no moneys which he may use to repay the Bank.

This does not mean, however, that the State Forester may not borrow the amount authorized in S.B. No. 2114 from the Bank of North Dakota at this time. It only means that the State Forester would not be able to begin to repay the Bank during this biennium.

A similar situation involving the State Board of Higher Education arose following the 1987 Legislative Session. House Bill No. 1674, as enacted by the Fiftieth Legislative Assembly, authorized the Board to borrow from the Bank of North Dakota for the purpose of constructing an aerospace science training facility at the University of North Dakota. However, the appropriation provided by this bill to the Board for the construction of this facility was limited to the 1987-89 biennium.

The problem faced by the Board was resolved through negotiations with the Bank resulting in a loan agreement. The loan agreement provided that the full amount of the loan was payable on the last day of the 1987-89 biennium. The agreement also provided that the loan term could be extended in conformity with legislation passed by the Fifty-first Legislative Assembly appropriating funds to the Board for the repayment of the loan over an extended period of time.

A similar arrangement with the Bank could be made to address the State Forester's needs. The agreement would provide the State Forester would have legislation introduced at the next legislative session authorizing him to repay the loan and also providing an appropriation for repayment.

Your final question concerns the authority of the Emergency Commission with regard to this matter. N.D.C.C. § 54-16-03 provides that the Emergency Commission may, in an emergency situation, authorize the expenditure of moneys in excess of an appropriation or for a purpose other than that for which the moneys were appropriated. In addition, N.D.C.C. § 54-16-04 provides that the Commission, "in an extremity," has the power to authorize money to be drawn from the general fund to meet an emergency. If the State Forester feels that this is an emergency situation justifying action by the Emergency Commission, he could pursue these options.

I hope that this response satisfactorily answers your questions. Please contact me again if you have further questions or would like to discuss this matter in further detail.

Sincerely,

Nicholas J. Spaeth