

## **N.D.A.G. Letter to Linnertz (Dec. 18, 1989)**

December 18, 1989

Mr. Joseph C. Linnertz  
Director of Administrative Services  
Department of Public Instruction  
State Capitol  
600 East Boulevard Avenue  
Bismarck ND 58505

Dear Mr. Linnertz:

Thank you for your August 4, 1989, letter requesting my opinion as to whether the Department of Public Instruction (Department) must include in its financial statements fixed assets associated with the state's public broadcasting system. It is my understanding the assets were purchased with funds appropriated to the North Dakota Educational Telecommunications Council (Council).

State departments, agencies, and institutions are required to include all fixed assets "under their control" in their financial statements. N.D.C.C. § 54-27-21. The term "control," as used in N.D.C.C. § 54-27-21, is not defined. Therefore, the definition of "control" is determined by analyzing its common meaning. N.D.C.C. § 1-02-02.

The word "control" means "[p]ower or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee." Black's Law Dictionary 298 (5th ed. 1979). Thus, the Department is only required to include fixed assets in its financial statements if the Department has the power or authority to manage, direct, etc., the use of those assets.

The Department does not have the statutory authority necessary to control fixed assets associated with the state's public broadcasting system. The Department has statutory authority to contract "for the purpose of providing the people of the state with educational telecommunication programs and systems in the fields of elementary, secondary, and higher education, adult education, and other fields tending to promote cultural development." N.D.C.C. § 15-47-36. However, this authority does not carry with it the authority to control the state's public broadcasting system. That authority apparently rests solely with the Council, which is required to "[c]ontract with eligible applicants to build and operate public television stations in this state." N.D.C.C. § 15-65-03(12).

Consequently, because the Department does not have the power or authority necessary to control fixed assets associated with the state's public broadcasting system, it is my opinion that those assets need not be included in the Department's financial statements. Further, since these assets are not under the Department's control or authority, the Department has no obligation to provide insurance covering these assets.

If you have any further questions on this matter, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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