

**OPINION**  
**62-11**

August 23, 1962 (OPINION)

APPROPRIATIONS

RE: Twenty-five Percent Required for Fourth Quarter of Biennium

This is in reply to your inquiry in regard to expenditures of budget item appropriations.

The items concerned are:

Furniture and office equipment	\$2,500.00"
and	
Travel - out of state -	\$ 700.00."

You call our attention to the specific item in the 1961 Supplement to the North Dakota Century Code, section 10-04-03, subsection 3, which provides:

\*\*Such traveling expenses shall include the expenses of the commissioner or any person designated by him in attending the annual convention of the North American association of securities administrators, and the annual dues to said North American association shall be paid from appropriated funds."

You further call our attention to section 54-27-10 of the North Dakota Century Code, which provides:

APPROPRIATIONS - WHEN AVAILABLE. Seventy-five percent of the total of all appropriations and of each separate item thereof made by the legislative assembly for the maintenance of any state institution, department, board, commission, or bureau for the biennium, shall become available on the first day of July next succeeding the enactment by the legislative assembly. The remaining twenty-five percent of any such appropriation shall be available only at the beginning of the fourth quarter of the biennium. No state institution, department, board, commission, or bureau for which an appropriation is made shall disburse more than seventy-five percent of the appropriation during the first eighteen months of the biennium nor incur any expense or liability which shall be discharged from such appropriation or for which such appropriation shall become available. The term 'maintenance' shall not apply to nor include moneys appropriated for the payment of the cost of any buildings or equipment or for making improvements and repairs to buildings and grounds, or any other special appropriations exempted from the operation of this section by the act making such appropriation."

You also inform us that the budget stated under "Plans and

Recommendations":

I feel that it is advisable to again stress that this department has operated independently for only the present biennium. As an independent department we must have an adequate staff equipped with proper office equipment. Presently, we are operating inadequately in both departments. We are, therefore, restricted in carrying out the functions assigned to this department. In common with Blue Sky administrators in other states, this department is naturally growing in volume of work and the suggestions for improving the administration of the Securities Act will further increase the workload."

You further inform us that in regard to the furniture item, the amount requested was intended to be used to immediately provide the department with equipment necessary for normal working. Also, you inform us that the travel out of state item was intended to be used as reimbursement for expenses occurring by reason of the commissioners attendance at two conventions held in the fall of the year.

You, therefore, request that this office issue a letter indicating that in both the case of the Furniture, Fixtures and Office Equipment Account and Travel Out of State Account, it would not be a violation of the above-quoted section 54-27-10 to fail to carry twenty-five percent of such appropriations into the fourth quarter of the present biennium.

While we do recognize that the securities commissioner office is a relatively new feature of the state government, we note that it has been in existence for a period of over ten years in one form or another. The item of furniture and office equipment has appeared in various budget appropriations for several of those years, either separately, or under a general heading such as "postage, supplies, printing, furniture and fixtures." Admittedly also, the office and its function has increased to a large extent since first initiated, and presumably its function will continue to grow. However, we find nothing in the history of the legislation, including budget appropriations, involving this department which could lead to the conclusion that this particular item for this particular biennium is in any way distinguishable from the usual appropriation for such purposes, or should or could be in any way exempt from the specific provision of section 54-27-10 as quoted above. It is, therefore, our opinion that twenty-five percent of this item should properly be retained to the beginning of the fourth quarter of the biennium.

As to the "travel out of state" item, we believe there is a bit more difficulty in arriving at a decision. Insofar as the statutory item quoted above specifically requires reimbursement of expenses incurred at attending the "annual convention of the North American association of securities administrators, and the annual dues to said North American association", it would be our opinion that such statutory provision would be controlling special legislation and would take this "item" out of the general purview of the above-quoted section 54-27-10. However, insofar as the facts you give indicate that this item is more than sufficient to cover such activities with the North

American association of securities administrators, without interference thereby with carrying twenty-five percent of the appropriation into the last quarter of the biennium, we cannot issue an opinion to the effect that twenty-five percent of such item does not have to be carried to that last quarter of biennium.

You may, of course, apply to the Emergency Commission for the "out of state travel expense" if insufficient moneys are on hand, then transfer moneys received back to the Emergency Commission after the first of the year.

LESLIE R. BURGUM

Attorney General