

**OPINION**  
**63-233**

April 29, 1963 (OPINION)

STATE EMERGENCY COMMISSION

RE: Application for Emergency Funds - Existing Conditions

Your letter of April 22, 1963, has been received. Your letter provides as follows:

The appropriation for the Department of Agriculture and Labor in Senate Bill No. 1, passed by the 38th Assembly for the fiscal period beginning July 1, 1963 and ending June 30, 1965, includes a line item 'Predatory Animal and Rodent Control \$101,500.00'. This line item was disapproved by the Governor.

As an individual member of the State Emergency Commission, I respectfully request your opinion whether or not the State Emergency Commission under the law has the authority to grant a request of the State Department of Agriculture and Labor for money from the State Contingency Fund to be used after July 1, 1963 for Predatory Animal Control."

When the governor of this state considers an appropriation bill after adjournment by the Legislature, he may disapprove any item therein and file his objections in the office of the Secretary of State in the same manner as he is required to do with any other bill passed by the Legislative Assembly and vetoed by him, and the items disapproved are thereafter void. The foregoing statement is based on Sections 79 and 80 of the North Dakota Constitution and is directly supported by the 1935 North Dakota decision of State v. Olson, 260 N.W. 586. This case stated that if the Legislature is not in session when the governor vetoes a specific item in an appropriation bill there is no way for the items to become valid nor to be enacted into legislation. It went on to state that it should not be overlooked that when the governor approves or disapproves items in an appropriation bill, he is acting in a legislative capacity and not simply as the executive. Thus, it is important to bear in mind that the veto of the item for predatory animal and rodent control in the sum of \$101,500.00 by the governor in the appropriation bill, Senate Bill No. 1, that this act by the governor was a legislative act.

The State Emergency Commission derives its authority to grant requests for money to various boards, commission or departments of this state under the authority set forth in chapter 54-16 of the North Dakota Century Code. Section 54-16-04 of this chapter provides as follows:

MAY ORDER TRANSFER OF MONEYS BETWEEN FUNDS - ORDER MAY DRAW FROM STATE TREASURY. Whenever it is made to appear to the emergency commission by an itemized verified petition of any board, commission, or officer authorized to expend public funds that an emergency exists, the emergency commission shall assume

that an emergency exists demanding such action and may order money transferred from one fund to another fund belonging to or appropriated for the same institution or board or the same state enterprise, or in an extremity may authorize money to be drawn from the state treasury to meet the emergency until such time as the legislative assembly can make an appropriation available therefor. The term 'emergency' shall be limited to calamities or unforeseen happenings subsequent to the time of the making of appropriations to be effected by such transfer and which were clearly not within the contemplation of the legislative assembly and the governor at the time of making such appropriation. The emergency commission shall not increase the amounts to be expended for any specific purpose by more than ten percent, and this shall be done only to meet a deficiency arising in an attempt to carry out the purpose of the appropriation." (Emphasis ours).

Note the liberal provision of the first portion of the first sentence of section 54-16-04 which permits or directs the Emergency Commission to assume that an emergency exists when a itemized, verified petition by a department head is filed for the purpose of permitting the transfer of funds within the department. This implies that the Emergency Commission is not required to make a determination or finding that an emergency exists.

However, as to the last portion of the first sentence of section 54-16-04, which applies to the question at hand, such assumption is not available. This provision provides that the Emergency Commission may, in an extremity, authorize money to be withdrawn from the state treasury to meet the emergency until such time as the Legislative Assembly can make an appropriation available therefor. Under this provision the Emergency Commission must determine if an emergency exists. The statute defines what constitutes an emergency and is limited to calamities or unforeseen happenings subsequent to the time of the making of the appropriation to be effected. The statutory definition governs and controls. The term "calamity" is defined by Webster's Dictionary as "A state of deep distress or misfortune; misery; any great misfortune." The synonym for this word is "disaster." From the language employed in the statute, it is to be noted that the condition for an emergency must come subsequent to the legislative action which includes the governor's veto. The timeliness or untimeliness of the veto does not in itself create an emergency as contemplated by the statutory provision.

We wish to observe and mention that in the past the Emergency Commission has authorized the withdrawal of funds from the state treasury in instances where the Legislature directed certain things to be done but obviously overlooked making the necessary appropriation. In those instances, the funds were granted so that the act passed by the Legislature could be carried out. However, in this instance, we have a situation wherein the Legislature considered the need for animal and rodent control and made an appropriation therefor which in the final stages was denied by a legislative process, namely, the governor's veto.

The Emergency Commission, like any other creature of the Legislature, has only such authority as is granted to it by statute. It has no

power or authority independent of the legislative grant. Its actions must be confined to the authorities so granted.

Section 186 of the North Dakota Constitution provides that no money may be withdrawn from the state treasury except upon an appropriation first made by the Legislature. The Legislature appropriated funds to the State Contingency Fund by Chapter 9 of the 1961 Session Laws and limited the purposes for which such funds may be used. In this instance section 54-16-04 governs.

The governor's veto, including the objections, is part of the legislative process. The objections of the governor filed with the veto on the item in question are as follows:

On page 7 in the appropriation for the Commissioner of Agriculture and Labor I veto the line item of \$101,500.00 for predatory animal and rodent control. This item is to support a program of matching federal funds to control coyotes, foxes, rates, mice and other animals. I have been informed that the coyote problem in this state is now very small. Sheep raising has diminished in areas frequented historically by coyotes. The control of foxes statewide is not possible under this program. Rodent control on farms, grain elevators and in municipalities should be a local responsibility. Educational service is available from County Extension Agents and Public Health officers. Commercial exterminating companies are available to municipalities, grain elevator operators and individuals. Advances in effective poisons have made rodent control possible and safe for anyone interested in controlling rats and mice. Nearly all of the predatory animal rodent control program could be done by private enterprise rather than by a taxpayer-supported service operated by the State. I would anticipate that private enterprise will move in to fill any gap left by the abolition of this state program. This program is an example of a once-necessary government activity which has done a good job but is now becoming outmoded. This type of program should give way to the more demanding services of government."

Your request did not recite any specific fact as to the existence of any calamity or emergency. We have no independent facts available to consider other than official records, nor is it the function of this office to make findings of fact in instances like this. We have set out, explained, discussed and interpreted the law applicable. There now remains the matter of determining the true facts.

It is therefore, our opinion that it is incumbent upon the Emergency Commission to find and determine whether or not there has been such a change in conditions since the veto so that there now exists an emergency which is in the nature of a calamity or unforeseen happenings as hereinbefore defined. The application for funds may be granted only upon a determination and findings made by the commission that such conditions do now exist, and that same constitutes an emergency as defined in section 54-16-04 of the North Dakota Century Code.

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