

OPINION
64-16

April 14, 1964 (OPINION)

AUDITING BOARD

RE: Vouchers - Required Information

This is in reply to your letter of April 9, 1964, relative to chapter 63 of the 1963 Session Laws. You state the auditing board recently failed to approve a voucher for \$50,000 submitted to the state water commission by the Bowman County Water Management District. The payment of the \$50,000 was intended to allow the letting bids in May 1964, for the construction of the Bowman-Haley dam. You note the 1963 Legislative Assembly enacted chapter 63 of the 1963 Session Laws which provided for the appropriation of \$200,000 to the state water commission for participation in nonfederal construction costs of water projects. The \$50,000 was to be paid from this appropriation.

According to your letter the auditing board was concerned with whether or not the payment of the \$50,000 would be in violation of Section 186 of the North Dakota Constitution, particularly the following provision:

No bills, claims, accounts, or demands against the State or any county or other political subdivision shall be audited, allowed, or paid until a full itemized statement in writing shall be filed with the officer or officers whose duty it may be to audit the same, and then only upon warrant drawn upon the Treasurer of such funds by the proper officer or officers."

The question is whether the voucher fulfills the requirements of a "full itemized statement" required by Section 186 of the North Dakota Constitution.

You note in your letter that the United States Army Corps of Engineers is responsible for the actual construction of the dam and only they are able to provide a fully itemized statement insofar as the actual costs of the labor, material and land are concerned. The water commission is not attempting to pay the Corps of Engineers. The money is to be paid to the Bowman County Water Management District. The voucher, according to your letter, calls for "payment of nonfederal costs of construction of municipal, industrial and domestic water storage area of Bowman-Haley dam and reservoirs." You further state this is as complete a statement as the district can submit.

In your letter you call our attention to the fact that section 2 of chapter 63 of the 1963 Session Laws provides:

There is hereby appropriated to the state water conservation commission out of any moneys in the state treasury, not otherwise appropriated, the sum of \$200,000.00 to be available,

in conformity with such rules and regulations as it may prescribe, for use in providing anticipated future nonfederal construction costs of and participation in federal, interstate or international water projects and for undertaking or participation in major, emergent or emergency state, area or local water resources development projects, activities or programs."

The state water commission, on October 8, 1963, adopted a motion that \$50,000.00 be set aside for the Bowman County Water Management District "to be granted to the district when construction of Bowman-Haley dam is commenced." You feel this constitutes the necessary "rules and regulation" required by section 2 of chapter 63 of the 1963 Session Laws. You further believe the Legislative Assembly intended to allow moneys to be paid from such appropriation in this manner in view of the fact the Legislature authorized payment "in conformity with the rules and regulations" prescribed by the water commission. In support of this contention you call our attention to Senate Concurrent Resolution I adopted by the 1963 Legislative Session in which it is stated "the Legislature recognizes the nonfederal repayment obligations required in connection with providing water supply features in federally financed projects and hereby direct the state water conservation commission to make and supply such assurances relative thereto as may be required by and satisfactory to the chief of engineers.

In further support of your contention you note the 1963 Legislative Assembly took into consideration the inability of a local entity cooperating with the federal government to provide the state water commission with a "full itemized statement" relative to the specific costs of a project since section 2 of chapter 63 of the 1963 Session Laws provides that the funds are to be available "for use in providing anticipated future nonfederal construction costs of and participation in federal, interstate or international water projects." You note a fully itemized statement could not be prepared for "anticipated" future costs.

While the intent of the Legislature in enacting chapter 63 of the 1963 Session Laws might well have been to permit the expenditure of these funds "in conformity with such rules and regulations as it (state water commission) may prescribe" and without the "full itemized statement" required by Section 186 of the North Dakota Constitution, such intent cannot prevail if it is contrary to the North Dakota Constitution. However in *State v. Kositzky*, 38 N.D. 616, 166 N.W. 534 (1918) the Supreme Court of North Dakota considered the above-quoted provision of Section 186 of the North Dakota Constitution as it applied to certain expense payments to be made to the justices of the Supreme Court. The contention was that as far as the act under consideration required the quarterly payments to be made "without filing any itemized statement" they were void, as being in violation of Section 186 of the Constitution of this state. See page 537 of the NW Report. The court, in disposing of this matter, stated:

To audit a claim, account, or demand means to examine, adjust, pass upon and settle such claim, account, or demand. An audit of claims and accounts is required for the purpose of

determining the amount, if any, to be paid. It involves an exercise of discretion by the auditing officer or board. Under the provisions of the acts in controversy, the amount, the time of payment, and the persons to whom payment shall be made, have been fixed and designated by law, so that there remains nothing for the respondent to do but to perform his ministerial duty of issuing his warrants to each judge for the amount so fixed."

See page 537 of the Northwestern Report.

The court also discussed the provisions of the chapter establishing the state auditing board (now chapter 54-14 of the North Dakota Century Code, as amended) and noted that the chapter specifically exempted from the auditing board procedures those accounts, claims, or demands against the state "as are specifically exempt by law." See sections 54-14-01, 54-14-03, as amended, and 54-14-04 of the North Dakota Century Code. The court further held:

There is no officer or officers whose duty it is to audit claims and accounts against the state, other than the state auditing board, and it is apparent that it is not the duty of this board to audit any claim or demand against the state that has been specifically excepted by law.

* * * * *

These acts constitute valid annual appropriations of \$500 for each judge of the Supreme Court. * * * They contain no provision requiring the quarterly installments to be audited by anyone. It was entirely competent for the legislature to thus make and audit its appropriations, and no duty devolves upon the state auditing board, or upon any officer, to audit any claim based upon either of said acts. Inasmuch as there is no officer or officers whose duty it is to audit such claims, there is no officer or officers with whom itemized statements of any such claims must be filed.

Appropriations having been made not only by the terms of these acts, but by the general budget acts, for the payment of the claims and demands arising under those acts, and the amount of such claims having been fixed by law, and there being no officer or officers whose duty it is to audit such claims, it becomes the ministerial duty of the state auditor, under the provisions of said acts, to issue his warrants for the payment thereof at the times as provided by law."

While the facts of the present situation and those contained in the cited case are not, in all points, parallel, we believe the holding in such case is applicable to the present situation. It would appear the intent of the Legislature, in providing the money appropriated is to be available "in conformity with such rules and regulations" as the state water commission may prescribe, has delegated to the water commission the authority to audit the appropriations. The statements of the Legislature lead to the conclusion the appropriation was to be paid in accordance with the dictates of the water commission.

We have not seen the exact voucher presented by the water commission

for payment. While, in view of the above-cited authority, we do not believe a fully itemized statement, as that term is ordinarily construed, need be submitted to the auditing board, we believe it would be well to submit to the board with the voucher a statement setting forth the facts of the situation and the method in which the money will be expended and for what purposes. While we realize the exact procedure and the amounts may not be available we believe a general statement as to usual procedure can be submitted.

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