

OPINION
65-140

March 17, 1965 (OPINION)

The Honorable William L. Guy

Governor

RE: Korean Bonus Bonds - Use of Funds - Publication of Service Records

This is in response to your letter in which you inquire as to the constitutionality of House Bill No. 618 which provides for an appropriation of \$67,840.00 out of the Korean Conflict Adjusted Compensation Fund in the State Treasury for the purpose of completing the compilation and printing of the service records of veterans of World War II and the Korean hostilities.

Section 175 of the North Dakota Constitution provides as follows:

No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied."

The Korean Adjusted Compensation Program came into being by virtue of Article 65 of the North Dakota Constitution, which was adopted in June of 1956, and provides as follows:

Section 1. The legislative assembly of the state of North Dakota is hereby authorized and empowered to provide by legislation for the issuance, sale and delivery of the bonds of the state of North Dakota in the principal amount not to exceed \$9,000,000.00, the proceeds thereof to be used in payment of adjusted compensation to North Dakota veterans of the Korean conflict who served in the armed forces of the United States or any of its allies during the period from June 15, 1950 to July 2, 1953 on the basis of terms of service, and under such terms and conditions as the legislative assembly may prescribe."

It is to be noted that this constitutional provision provides that the proceeds thereof are to be used in the payment of adjusted compensation to North Dakota veterans of the Korean conflict. To implement the constitutional provisions, Chapter 243 of the 1957 Session Laws was enacted which became Chapter 54-39 of the North Dakota Revised Code. By Chapter 371 of the 1959 Session Laws, Section 54-39-02 was amended. This section, amongst other things, provides that "such issue of bonds is authorized for the sole purpose of providing funds to be used in payment of adjusted compensation to North Dakota veterans of the Korean conflict ***. When the purpose of such appropriation has been satisfied, all remaining moneys shall be transferred to the sinking fund for such issue of bonds."

Without referring to anything further and just taking into consideration the present bill and the existing constitutional

provisions, we would be compelled to conclude that there is grave doubt that House bill No. 618 could withstand a constitutional challenge or that it is valid on the basis that the appropriation is for a purpose other than that for which the tax was levied. The tax levy imposed under chapter 243, Section 8 of the 1957 Session Laws (section 54-39-08, 1957 Supplement) was for the purpose of paying the interest and principal of the bonds (Korean Conflict Bonus Bond Issue). The annual levy was to be determined by the Industrial Commission and was to be sufficient to produce at least \$600,000.00 per year until the bonds have been paid.

However, Section 175 of the North Dakota Constitution has been construed by the North Dakota Supreme Court in *State ex rel. Sathre vs. Hopton*, 66 N.D. 313, 265 N.W. 395, as not inhibiting the Legislature from appropriating to another purpose a surplus remaining after the accomplishment of the purpose for which the tax was imposed. The Court on Page 327 said as follows:

The idea that the moneys resulting from a tax must be applied to the purpose for which the tax was imposed implies that the purpose has not been attained; that the proceeds of the tax are needed to accomplish such purpose, and that they can actually be applied thereto. So where the purpose or objective for which the tax was imposed has actually or potentially been attained or satisfied, and there remains a surplus which is not needed for the accomplishment of the purpose for which the tax was imposed, then the lawmakers are not inhibited by Section 175 of the Constitution from appropriating such surplus to some proper public purpose."

Thus, it becomes a question of fact whether or not there is a surplus of money available which is not needed to pay off the principal and interest of the bonds issued. Upon inquiry to both the Bank of North Dakota and the Office of the State Treasurer, we were informed that the unpaid and outstanding bonds amount to \$4,180,000.00. The bonds come due in the following years in the following amounts:

1965	\$785,000.00
1966	810,000.00
1967	835,000.00
1968	865,000.00
1969	885,000.00

The collections last year amounted to \$1,183,746.23. The State Treasurer's Office informed us that there is presently in the sinking fund \$2,199,389.65. There is presently in what is referred to as an administrative fund, also part and parcel of the Korean Bonus Program, the sum of \$2,193,521.25. The total assets of the Korean Bonus Bond Program would presently amount to \$4,392,910.90. This would be an amount in excess of the outstanding bonds. Assuming these figures are correct, the principle of law announced by the North Dakota Supreme Court in *State ex rel. Sathre v. Hopton*, supra, would be applicable.

On the assumption that these figures are correct, it is our opinion that House bill No. 618 as passed by the Thirty-ninth Legislative assembly could successfully meet a constitutional challenge and would be deemed valid legislation. If, however, the figures furnished are erroneous and in reality the assets on hand are less than the amount outstanding, and that additional income would be needed to pay off the bonded indebtedness, then it would be our opinion that grave doubt exists whether or not House Bill No. 618 could successfully withstand a constitutional challenge and would be deemed a valid act or appropriation.

HELGI JOHANNESON

Attorney General