

OPINION
65-449

February 5, 1965 (OPINION)

The Honorable Walter Christensen

State Treasurer

RE: Unsatisfied Judgment Fund - Administrator - Attorney General

This is in response to your letter in which you ask who is administrator of the Unsatisfied Judgment Fund and by whom is he appointed. Your further inquire as to the duties of the offices of State Treasurer and the Attorney General in relation to said fund.

The Unsatisfied Judgment Fund came into being upon the enactment of chapter 274 of the 1947 Session Laws, (now chapter 39-17 of the North Dakota Century Code). Because the Attorney General represented the fund under certain conditions and was authorized to appoint special counsel for the fund, the administration of the program under the fund was undertaken by him. From the very outset most of the work pertained to legal matters and it was quite natural for the Attorney General to assume a greater role in the administration of the program. At first only a few cases were processed in which the fund was required to participate or make payments. Initially these cases were absorbed in the Attorney General's Office by the regular staff. Later as the case load increased, one person in the Attorney General's Office was designated to represent the Unsatisfied Judgment Fund. Subsequently, the case load again sharply increased which required a full time special assistant attorney general to represent the fund and to process the cases. As a result of this a full time special assistant attorney general was appointed and designated to represent and manage the affairs of the fund and to undertake the other duties related to such fund.

At about the same time because of the work load a "separate" office was designated which was "manned" by a special assistant attorney general and a secretary hired by same with the approval of the Attorney General. The secretary and the office equipment were all paid for from the Unsatisfied Judgment Fund. Vouchers for the various expenditures were approved by both the Attorney General and the State Treasurer. Prior to establishing a separate office the attorney representing the Unsatisfied Judgment Fund was housed in the Attorney General's Office. Later the main office of the Attorney General found it difficult to provide office space and the Treasurer's Office had office space available whereupon the special assistant attorney general moved the office to the Treasurer's Office.

The administration of the Unsatisfied Judgment Fund has been accomplished by the special assistant attorney general assigned to represent the fund in legal matters. Almost all of the work pertaining to said fund either is legal or arises out of legal matters, or is necessitated to properly process and carry out the

legal proceedings involved. As a result of this, the general impression was left to many who dealt with the fund that the special assistant attorney general representing the fund was in charge of the fund, the office, and matters relating thereto. In many instances he determined whether or not appeals should be taken after consultation with the Attorney General, and the manner in which a case was worked up and investigated for trial. It was generally thought by all of those who came into contact with the Unsatisfied Judgment Fund that such attorney administered the fund. This is supported to some extent by the case entitled "Person v. State of North Dakota Unsatisfied Judgment Fund and its Legal Counsel." (114 N.W. 2d. 257.) The addition of "Legal Counsel" to the Unsatisfied Judgment Fund as a party-defendant apparently was to designate some person who was responsible for the Unsatisfied Judgment Fund Program. As a result of these various things the special assistant attorney has been deemed to be the person who managed the affairs of the Unsatisfied Judgment Fund.

"* * * The Attorney General at his discretion may appoint special counsel to defend the fund. The trial judge of the district court shall fix the amount of such special attorney's fees and expenditures, and certify such amount, to the attorney general who, after approving, shall certify same to the administrator of the unsatisfied judgment fund."

(Emphasis supplied.)

From this language it is clear that the Attorney General is not the administrator. The State Auditor in his report refers to the State Treasurer as the administrator but the reasons therefor are not valid as will be set out hereinafter.

The Act, (section 39-17-02 of the North Dakota Century Code), provides that the fees collected be deposited with the State Treasurer who shall credit same to the general fund and maintain a separate accounting thereof. This language does not establish an administrator. The State Treasurer, in the absence of this provision, would still have to do this under provisions of Section 186 of the North Dakota Constitution - the only difference being that this fund is an earmarked fund whereas other funds deposited in general fund without any special provisions are part of the general fund. However, there are many earmarked funds but the mere earmarking of a fund does not establish or create an administrator of that fund. If the earmarking of a fund in the general fund would create an administrator, the State Treasurer would be the administrator of many, many programs.

The term "administrator" is not defined and consequently it carries the meaning generally ascribed to such term. The term, in the absence of such statutory definition, refers to a person who performs the duties of an administrator, administers or dispenses or manages the affairs of a business program or whatever it may be. The special assistant attorney general in charge of the fund comes closest to this function and performs these duties.

It might be well to make a brief reference at this point to the language quoted herein which authorizes the district judge to fix the

amount of special attorney fees and expenditures. This language does not attempt to make an administrator out of the district judge. This language merely provides that where the Attorney General appoints a special counsel other than the legally assigned counsel on a case basis, the trial judge sets out the fee for such services. Nevertheless, such fees must be approved by the Attorney General before they are certified to the administrator.

Considering the manner in which the office in question "grew" and the discussion set out above, it is our opinion that the special assistant attorney general assigned to the Unsatisfied Judgment Fund is the administrator. This special assistant attorney general is appointed by the Attorney General.

In view of the practices employees heretofore that both the Attorney General and the State Treasurer approved vouchers for payments out of the fund, it is recommended that such practice be continued. The duties of the State Treasurer in this respect consist primarily of maintaining accurate records as to the condition of the fund somewhat in the same manner as he maintains records on all other earmarked funds in the general fund. Under this concept the special assistant attorney general would be responsible in maintaining appropriate accounting of expenditures of the fund, collections made (from judgment debtors), and the operation of the office, including personnel. He in turn would be responsible to the Attorney General who appoints him.

ATTORNEY GENERAL

Helgi Johanneson