

OPINION
65-8

May 14, 1965 (OPINION)

Mr. Ralph Dewing, Director

Department of Accounts and Purchases

RE: Appropriations - Cancellation - Continuation

This is in reply to your letter of May 10, 1965, relative to cancellation of appropriations. You state the following facts and question:

"The 1963 legislative session appropriated \$500,000.00 to the State Hospital operating budget improvement and repairs for the biennium July 1, 1963 and ending June 30, 1965. In May of 1964 the Board of Administration directed our office to transfer \$51,000.00 of this appropriation to a special fund in the State treasury to match available federal funds for a special project at the State Hospital. The Board included a copy of an opinion dated May 21, 1964 from your office to Mr. Howard Henry, then Chairman of the Board. Up to the present time, no part of the \$51,000.00 set aside in a special fund has been expended.

"Recently I have received a request from the State Hospital to continue the amount of \$51,000.00 in the special fund beyond the end of this biennium. In his request Mr. Lahaug, Administrator for the State Hospital, states that the federal funds have been approved but the project cannot be completed by July 30, 1965.

"Section 54-27-09 of the North Dakota Century Code as amended by the 1963 legislative session provides for the cancellation of appropriations by the Director of the Department of Accounts and Purchases except when continued by a special board provided by that section of the code.

"We request an opinion from your office as to whether this amount of \$51,000.00 may be continued by the special board for more than thirty days after the end of the biennium for which it was appropriated."

Section 54-27-09 of the North Dakota Century Code, as amended, provides:

"DEPARTMENT OF ACCOUNTS AND PURCHASES TO CANCEL UNEXPENDED APPROPRIATIONS - WHEN THEY MAY CONTINUE. The department of accounts and purchases, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations, which shall have remained undrawn after the expiration of the biennial period during which they become available under the law. Two members of the legislature serving on the budget board with the auditing board may continue appropriations or balances in force for new construction projects and for major repair or improvement

projects for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the department of accounts and purchases."

Under this section the appropriation referred to would, by law, be cancelled on July 30, 1965, unless it can be considered a major repair or improvement project, in which case it can be continued for two years by the two members of the legislature serving on the budget board with the auditing board if such continuance is recommended by the department of accounts and purchases.

From the facts available to us, we believe this project could be considered a major repair or improvement project within the meaning of Section 54-27-09, quoted above. While there is only some \$50,000.00 of state funds involved in the project, it is our understanding there is also some \$119,000.00 of federal funds involved. An improvement and repair project costing some \$170,000.00 could, in our estimation, constitute a major repair and improvement project within the meaning of Section 54-27-09.

It is to be noted that S.B. No. 222 enacted by the 39th Legislative Assembly takes effect on July 1, 1965. This bill, among other items, repeals Section 54-27-09. However, Section 11 of the bill provides:

"DEPARTMENT OF ACCOUNTS AND PURCHASES TO CANCEL UNEXPENDED APPROPRIATION - WHEN THEY MAY CONTINUE. The department of accounts and purchases, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations, which shall have remained undrawn after the expiration of the biennial period during which they became available under the law. The chairman of the appropriations committees of the senate and house of representatives of the legislative assembly with the auditing board may continue appropriations or balances in force for new construction projects and for major repair or improvement projects for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget."

Under present law, (Section 54-15-01 of the North Dakota Century Code, as amended), the budget board is composed of ten legislators. Apparently any two of these ten legislators may serve with the auditing board in continuing appropriations or balances in force for new construction projects and major repair or improvement projects. Section 54-15-01 of the North Dakota Century Code is also repealed by S.B. No. 222. Therefore, if action on the request for the State Hospital is to be taken after July 1, 1965, the two legislative members who are to serve with the auditing board in this matter must, in accordance with Section 11 of S.B. No. 222, be the chairman of the appropriations committees of the senate and house of representatives of the legislative assembly.

HELGI JOHANNESON

Attorney General