

**OPINION
66-255**

November 22, 1966 (OPINION)

Mr. Walter Christensen

State Treasurer

RE: State - Treasurer's Office - Check Cashing Service

This is in response to your letter in which you ask for an opinion whether or not the check cashing service is a proper legal service of the state treasurer's office.

We have examined the statutory provisions of Chapter 54-11 of the North Dakota Century Code and from such examination we must conclude that there are no provisions which either authorize or require the state treasurer to maintain a check cashing service. Likewise, we find no statutory or constitutional provisions which would prohibit such service.

If your question is designed to merely inquire whether or not the state treasurer is required to maintain the check cashing service or if such service would be illegal, the answers in both instances would be no.

We receive the impression that you intended to include in your questions the proposition whether or not such service is permissive or is considered as an unauthorized act.

It is common knowledge that the check cashing service has been maintained by the state treasurer for some time. At this time, without any further information, we would have to speculate as to the reasons or facts which promoted the implementation of the check cashing service. It is presumed that such service was implemented for the convenience of the employees and other state departments.

There are a number of services performed by the various departments which are not specifically authorized, either by statutes or constitutional provisions. Many officials and employees, to accommodate various organizations, provide speakers. The subject of the speech does not always pertain to the office, yet it is considered a legitimate function for which expenditures can be made. Another example is that certain state departments furnish coffee and light snacks to the office employees for an nominal charge. This service is designed for the benefit of the employees.

If the check cashing service was discontinued, it would be presumed that the employees will ask for time during office hours to cash checks because the banks are open only during office hours except for some evenings. This would result in a loss of time to the state if the employees would take time off to cash the checks.

We are familiar with the concept of law that state agencies have only such power and authority as is specifically granted to them, and as may be implied from such grant. Such authority comes from either the

legislature or the constitution. However, as indicated, there are some services which are deemed justified, even though the constitution and statutes do not specifically provide. Some of these services have emerged as a fringe benefit to the employees, which has been considered proper in many instances.

In the final analysis, it is our opinion that the check cashing service is permissive. The decision whether or not such check cashing service should be continued or discontinued rests in the sound discretion of the state treasurer. If such service were to cause an undue burden on your office, you would be entitled to discontinue the same. However, the overall value may be considered.

Our conclusions are, to a great degree, predicated on the fact that the service has been in existence for some time and has become common knowledge to the Legislature, which has not as of now expressed any desire or wish that such service either be continued or discontinued. This in effect can be construed as tacit approval or acquiescence in the check cashing service furnished. In conclusion, we cannot, as a matter of law, on the information considered say that it must be continued or that it must be discontinued.

HELGI JOHANNESON

Attorney General