

**OPINION
67-253**

June 5, 1967 (OPINION)

Mr. Jack D. Paul

Executive Director

Trade Commission

RE: State - Trade Commission - Operation

This is in response to your letter in which you state that the North Dakota Trade Commission proposes to hire someone on a contractual basis to perform certain services between July 1, 1967, and July 1, 1969, and pay for same from the 1965-1967 appropriation, Chapter 330, 1965 Session Laws. You also make reference to an opinion dated March 13, 1967, which does not cover this question. You then ask, may the Commission legally do this?

Apparently this proposal is the result of the bind in which the Commission was placed because of the non-action and action taken by the Fortieth Legislative Assembly by amending Chapter 51-10, but yet failing to make an appropriation for the biennium 1967-1969. The effect of this was adequately discussed in the opinion referred to and needs no further elaboration herein.

We have consistently advised that funds lawfully committed or expended before July first prior to the close of the biennium would not be subject to the cancellation provision of Section 54-44.1-11. To some degree, funds are expended for equipment, telephone service, stationery and other related items which are to be used after the close of the biennium, but whether or not funds may be expended for personnel services to be performed after the close of the biennium is a matter of a different nature. This is a novel question and, for that matter, the Commission is in a novel, perplexing situation.

The provisions of Chapter 51-10 are not repealed nor are they suspended as a result of any legislation. The Act remains in full force and effect. Its provisions must be carried out as well as can be under the circumstances. The main problem is the financing of the program to carry out essential and administrative activities.

The funds contemplated to be used were not derived from general fund monies and rather were derived from fees collected under the provisions of Chapter 51-10. It is conceivable that, unless the administrative costs can be borne by using funds heretofore appropriated, some state agency which is financed from the general fund would be required to perform at least some minimum administrative functions and such agency might even be compelled to apply to the emergency commission for additional funds. These are distinct probabilities and if they were to come to pass it would shift the financial burden upon the general fund. A reversion of the unexpected funds would not alleviate the difficult situation - neither would it solve any problems. The provisions of Chapter 51-10 were intended to be carried out at no cost to the general fund. It

was to be a self-sustaining program. To shift the burden to the general fund would be compounding the inequity rather than alleviating it.

The legislative action bringing about this situation was of such nature that it is virtually impossible to determine legislative intent. Had an appropriation been made of only \$1.00, the result would be more apparent. We cannot entertain repeal by implication. We are then confronted with what can be done to make the most out of an exceptional, unusual and difficult situation. It is our conclusion that the funds heretofore appropriated by Chapter 330 of the 1965 Session Laws, not otherwise expended, may be committed and expended prior to July 1, 1967, for the purpose of administering the program under Chapter 51-10 in line with the suggested contract.

By so concluding, we are not in any manner or form suggesting that this constitutes a precedent, except for such situations which are substantially the same as found in this instance.

HELGI JOHANNESON

Attorney General