

**OPINION
75-78**

September 15, 1975 (OPINION)

Mr. Mike Schwindt, CPA
Chief Auditor
Office of the State Auditor
State Capitol
Bismarck, ND 58505

Dear Mr. Schwindt:

This is in response to your letter of August 8, 1975, wherein you request an opinion of this office relative to Sections 54-44-04 and 54-44-11 of the North Dakota Century Code, as amended, concerning certain capital expenditures by the Department of Accounts and Purchases. You submit the following observations and questions in your letter:

"We request an opinion to determine the appropriation status of the Department of Accounts and Purchases purchasing department operating fund.

Section 54-44-04 provides, in part, that the director of the Department of Accounts and Purchases:

1. Shall be vested with the duties, powers and responsibilities involved in the operation of a centralized purchasing service. This purchasing service shall include the purchases, lease or rental of all equipment, furniture, fixtures, printing, materials, supplies, insurance and other commodities for all state departments, . . .excluding land, buildings. . .
2. Shall maintain and operate such supply rooms as may be found desirable to supply the several departments with office supplies and other commonly used commodities, . . .
3. Shall establish and operate a central duplicating service and central mechanical or electronic data processing facilities, . . .

Section 54-44-11 provides that:

1. The department at accounts and purchases shall establish a state purchasing department operating fund to be used for the procurement and maintenance of an inventory of equipment and supplies and to provide data processing services to the state departments and agencies. The sum of thirty-five thousand dollars is hereby transferred from the state general fund to the state purchasing department operating fund to provide the initial working capital and is hereby appropriated for supplies and equipment as a standing appropriation.

2. Each office, agency or institution provided with data processing service shall pay to the department of accounts and purchases a proportionate share of the cost of such service, as determined by the director of the department of accounts and purchases, based on actual cost and actual usage. The amounts paid to the department of accounts and purchases by the various offices, agencies, and institutions shall be deposited in the purchasing department operating fund and shall be expended in accordance with legislative appropriations.

Chapter 26, 1975 Session Laws, appropriated \$4,273,398 by line item for the operation of Central Data Processing but we found only the \$35,000 standing appropriation for the procurement and maintenance of an inventory of equipment and supplies.

Our questions are:

1. May the Department of Accounts and Purchases expend funds for the procurement of capital equipment for central duplicating?
2. May the Department of Accounts and Purchases expend more than \$35,000 during the biennium for the procurement and maintenance of an inventory of equipment and supplies?"

Initially we would note that in quoting Section 54-44-11(1) of the North Dakota Century Code, as amended, you have omitted a portion thereof which follows the quotation set forth in your letter and which provides additionally as follows:

* * * Any surplus in this fund in excess of one hundred fifty thousand dollars on June thirtieth of each year shall be transferred to the state general fund." (Emphasis supplied.)

Looking to the provisions of law which you have quoted in your letter, we note that the Department of Accounts and Purchases is authorized to expend funds for the procurement of capital equipment for central duplicating. This is set forth in Section 54-44-04 of the North Dakota Century Code, as amended, providing that the said department shall "establish and operate a central duplicating service and central mechanical or electronic data processing facilities." Section 54-44-11 of the North Dakota Century Code, as amended, sets forth the appropriation to provide the initial working capital as you have noted. This is a standing appropriation and income into this state purchasing department operating fund is from the payment by each office agency or institution provided with data processing services therefrom as provided by Section 54-44-11(2) of the North Dakota Century Code, as amended. We also note that under Subsection (1) of said statute, it is specifically provided that this fund may be used for "the procurement and maintenance of an inventory of equipment and supplies", etc., for which reason we are of the opinion that the Department of Accounts and Purchases may expend funds for the procurement of capital equipment for central duplicating.

With regard to the \$35,000 appropriation and whether such appropriation is a limitation upon the amounts that may be expended by the Department of Accounts and Purchases for the procurement and maintenance of an inventory of equipment and supplies, we would note that this appropriation is for the specific stated purpose of providing the "initial working capital" and in view of the state purchasing department operating fund created thereby, into which is deposited those payments by offices, agencies and institutions of the state that are provided with such services, we can only conclude that a revolving type of fund has been created from which the maintenance of such services and facilities can be effected. Further, in view of the maximum limitations of such fund, i.e. \$150,000, we conclude that the Department of Accounts and Purchases may expend such amounts as are reasonably necessary to maintain and effect such services as are contemplated by the statute, from the operating fund, and that any surplus in excess of the stated maximum limitation shall, on the thirtieth of June each year, be transferred to the state general fund.

We trust that the foregoing will answer your questions.

Sincerely,

ALLEN I. OLSON

Attorney General