

**OPINION
75-81**

November 13, 1975 (OPINION)

Mr. Edward J. Klecker
Director of Institutions
State Capitol
Bismarck, ND 58505

Dear Mr. Klecker:

This is in reply to your letter of October 16, 1975, in which you state that:

"The State Auditor's office desires a formal opinion from your office in regard to the State Penitentiary's industries accounting procedures and separated funds in the State Treasurer's office.

Substantial legislative changes have been made in the handling of inmate funds, and the State Auditors are also concerned with present legal requirements; therefore, a formal legal opinion is requested."

While your letter does not present us with the questions which you desire to be answered, we have read the attached correspondence relative to the two areas referred to in your letter and, coupled with discussions with representatives of your department and of the state auditor, we have attempted to formulate what appear to be the questions you desire answers to.

The first question, which pertains to the state penitentiary's industries fund, appears to be whether or not Section 12-48-13, which states in part that "the receipts from the sale of the license plates and road signs manufactured at the penitentiary shall be deposited with the state treasurer, to the credit of the general fund." has been superseded by Section 54-23-25, which provides in part that "All moneys belonging to the state, derived from any source at any of the institutions under the control of the director of institutions shall be . . .remitted to the state treasurer. . .and the state treasurer shall maintain a special operating fund within the state treasury for each remitting institution receiving funds from such sources."

Section 12-48-13 has existed in its present form as amended since 1963. Section 54-23-25 has existed in its present form as amended since 1965. Section 12-48-13 can be considered a special provision, while Section 54-23-25 can be considered a general provision. In this regard we are guided by the provisions of Section 1-02-07 of the North Dakota Century Code, a legislative rule of statutory construction. This section provides as follows:

Whenever a general provision in a statute shall be in conflict with a special provision in the same or in another statute, the

two shall be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest legislative intent that such general provision shall prevail.

Since it appears that the "receipts from the sale of the license plates and road signs manufactured at the penitentiary" is included within the term "all moneys belonging to the state, derived from any source at any of the institutions under the control of the director of institutions", it must be found that the two sections are irreconcilable insofar as they pertain to the disposition of license plate and road sign income.

Although Section 12-48-13 is a "special provision", Section 54-23-24 was more recent in enactment and therefore will prevail if a "manifest legislative intent" can be shown. While it may be interesting to dwell upon the manner in which the legislature appropriated funds for the operation of the penitentiary and penitentiary industries since 1965, it would appear that the acts of the legislature during the 1975 legislative session must be considered as the most recent manifestation of legislative intent relative to this question. In the information you provided it is indicated that a separate fund for penitentiary industries was established for the 1975-77 biennium by the legislative assembly. This new fund has a draw of only \$150,000 from the general fund, and that the remainder of the appropriation is to be met by income from penitentiary industries in the amount of \$1,183,447. This would appear to be a sufficient manifestation of the legislative intent that receipts from the sale of license plates and road signs not be deposited in the general fund as such, but, rather be credited to a special operating fund in the state treasury for use by penitentiary industries.

Therefore it is our opinion that Section 54-23-25 prevails over Section 12-48-13 insofar as the disposition of receipts from the sale of license plates and road signs manufactured at the penitentiary is concerned.

The second question you have asked appears to be, when distilled to its essential issue, whether moneys received by an inmate while incarcerated at the penitentiary and deposited with the Bank of North Dakota in a savings account (as opposed to a checking account) should be deposited by the warden or the director of institutions in trust for that particular inmate and deposits and withdrawals in those accounts be placed under accounting control on ledgers maintained at the penitentiary.

It appears that the auditor's office strongly suggests that these savings accounts, which are currently not under accounting control, be established in such a manner that ledgers be maintained for the various inmate accounts and kept at the penitentiary, or in the alternative, that inmate savings accounts be set up as trust accounts where each inmate would be a beneficiary of the trust. We have read the memorandum of October 13, 1975 from your legal counsel, Mr.

Zuern, relative to the subject of inmate accounts. We basically agree with Mr. Zuern's conclusions relative to care and custody of funds belonging to inmates. Mr. Zuern's conclusions indicate that it would be practical to establish inmate accounts in the form of trusts.

Since it appears that the recommendations of the state auditor and those of your legal counsel appear to be compatible and similar in their ultimate conclusions, there does not appear to be a legal question presented relative to inmate accounts. In the absence of a legal question, it would appear that the resolution of this matter is basically that of departmental policy.

Sincerely,

ALLEN I. OLSON

Attorney General