

**OPINION
76-60**

April 20, 1976 (OPINION)

Mr. Richard B. Thomas
State's Attorney
Ward County Courthouse
Minot, North Dakota 58701

Dear Mr. Thomas:

This is in response to your letter of March 30, 1976, wherein you request an opinion of this office relative to the direct deposit of net paychecks by county employees through the GEM Federal Credit Union. You submit the following facts and inquiry in your letter:

"This office is in receipt of a request for an opinion regarding the direct deposit of net paychecks by Ward County Employees through the GEM Federal Credit Union. 31 USCA Section 492 provides for direct deposit of checks to a federal or state chartered credit union and that the Secretary of the Treasury may promulgate regulations regarding the same.

The Auditor is concerned because there will appear no endorsement by the employee on the back of the check which contains the following language:

"I do hereby certify that the within bill, claim, account, or demand, is just and true; that the money therein stated; that the services therein charged were actually rendered and are of the value therein charged; that no part of such bill, claim, account or demand has been paid; and that the goods therein charged were actually delivered and were of the value charged."

This office has reviewed applicable statutes and can find no requirements for the endorsement placed on the check. 11-25-01 of the North Dakota Century Code adopted in 1975 provides:

". . . No warrant upon the treasurer shall be delivered or mailed to the payee or his agent or representatives until such warrant has been signed by the treasurer and entered on the treasurer's books as a check drawn on a bank depository. Warrants for salaries of county officers and county employees may be drawn by the county auditor from time to time as such salaries become due and payable."
(Emphasis added)

The portion of the statute "mailed to the payee or his agent or representative" would indicate tacit recognition of direct authorization for the deposit of payroll checks without endorsement by the employee. It is therefore the opinion of this office subject to that of the Attorney General that the authorization for direct deposit of net pay checks may be made to a recognized federal credit union.

It is requested that the Attorney General review the position of this office and add his guidance since the matter has statewide implications."

You have also enclosed a copy of the proposed authorization and agreement which requires execution and authorization by the employee as well as an acceptance and execution by the GEM Federal Credit Union.

You have noted the provisions of Section 11-25-01 of the North Dakota Century Code, as amended, and based thereupon have expressed your opinion that the authorization for direct deposit of net paychecks may be made to a recognized federal credit union.

Review of applicable statutes and examination of said Section 11-25-01 of the North Dakota Century Code, as amended, lead us to the same conclusion which you have expressed in your letter. Accordingly, we are of the opinion that the authorization for direct deposit of net paychecks may be made to a recognized federal credit union which is in accord with the opinion which you have expressed. Clearly the effect of Section 11-25-01 is to recognize the authorization of an agent or representative to receive such payments as are contemplated by the situation described in your letter.

While we must note the provisions of Section 21-05-01 and 21-05-02 of the North Dakota Century Code, requiring the verification of claims and accounts in very similar language to that referred to in your letter, exempts therefrom annual salary or per diem of jurors or witnesses fixed by or in pursuance of any statute, we are not certain whether all the salaries to which your inquiry relates could be classified as annual salary or in pursuance of any statute. For this reason and while such requirement may not prohibit the direct payment or direct deposit proposal set forth in your letter, it may be necessary to implement some other form of verification in lieu of the verification over endorsement, such as a verification statement on the payroll for the employee to sign. These requirements, however, will be governed by the dictates of the particular situation as applicable to the provisions of the statute requiring the verification statement.

We trust that the foregoing general observations and expressions will adequately set forth the opinion of this office upon the matters submitted.

Sincerely yours,

ALLEN I. OLSON

Attorney General