

**LETTER OPINION  
80-19**

August 7, 1980 (OPINION)

Honorable Robert B. Melland  
State Senator  
P. O. Box 112  
Jamestown, North Dakota 58401

Dear Senator Melland:

This is in response to your letter of July 7, 1980, regarding the capital construction fund created by the 1979 Legislature. You state the following:

The capital construction fund created by the Forty-sixth Session of the North Dakota Legislative Assembly through Senate Bill 2487 has now been funded to the full extent of the request of the director of the Department of Accounts and Purchases.

The following reflects my understanding of the details and actions concerning available funds and approved transfers to this time:

Adjusted general fund cash balance	
less outstanding financial obligations	
as of June 30, 1979	\$151,014,660.64
Cash balance required on June 30, 1979, by S.B. No. 2487, at a minimum, before any money can be transferred to the capital construction fund	\$148,600,000.00
The amount transferred to the capital construction fund per budget section approval on September 27, 1979	\$ 2,414,660.64
General fund cash balance as of June 30, 1980	\$157,000,281.16
Cash balance required by S.B. No. 2487 at the close of business on June 30, 1980, before additional money can be transferred to the capital construction	

fund	\$110,550,000.00
Funds in excess of statutory requirement of S. B. No. 2487	\$ 46,450,281.16
Amount requested by the director of the Department of Accounts and Purchases and approved for transfer to the capital construction fund by the budget section on July 2, 1980	\$ 7,730,000.00
Total approved transfers to the capital construction fund:	
September 27, 1979	\$ 2,414,660.64
July 2, 1980	\$ 7,730,000.00
Total transferred	\$ 10,144,660.64
Total appropriations of state dollars provided in the capital construction fund created by S.B. No. 2487	\$ 730,000.00
Total transferred	\$ 10,144,660.64
Shortfall in the capital construction fund	\$ 585,339.36

I am aware of a transfer of funds, approved by the emergency commission on January 21, 1980, from the main experiment station fund to a special NDSU music building fund of an amount of \$585,339.36. The amount of the transfer matches the shortfall in the capital construction fund.

It appears to me that section 2, the appropriations section of Senate Bill 2487, clearly provides that the only source of state funds to be used for the six facilities authorized in the bill is from the capital construction fund. There has been no transfer to the capital construction fund beyond those transfers approved by the budget section totaling \$10,144,660.61. It appears to me that any expenditure of state funds from a source other than the capital construction fund toward construction of a facility authorized in Senate Bill 2487 would be an unauthorized expenditure because the measure appropriates the state funds to be expended and appropriates those funds from the capital construction fund and no other

source.

Based on the above explanation of facts it is my conclusion that the capital construction fund lacks sufficient funds to complete the building projects described in Senate Bill 2487.

I request your opinion on the following items. Must all state funds for the construction of facilities described in Senate Bill 2487 come from or through the capital construction fund? If there is shortfall in the capital construction fund, at what point does that shortfall curtail the construction of buildings? For example, with a shortfall in excess of \$500,000.00 would the fund be deemed inadequate for the last two buildings on the priority list, namely the maintenance storage building at the State School of Science and the residential cottages at the school for the deaf, completion of both of which would require \$585,000.00 more in the fund; or, does the method of transfer requested by the director of the Department of Accounts and Purchases and approved by the budget section leave a gap in the state fund appropriation so that properly appropriated state funds for the music education building at NDSU are not sufficient to complete the building and therefore construction of buildings following the music education building on the priority list cannot be commenced until sufficient funding through the capital construction fund is available for completion of the music education building?

In an opinion dated December 12, 1979, regarding the implementation of Chapter 87 of the 1979 Session Laws, we stated:

The title to Chapter 87 describes the Act as one "for a conditional transfer of funds to a state capital construction fund" for the purpose of the "construction, remodeling, and equipping of, or additions to, buildings of state agencies, departments, and institutions." The facilities to be constructed and the order of priority for their construction are listed in Section 2 of Chapter 87. The condition necessary for the availability of the appropriation made in Section 2 for the commencement of the construction of a facility is the existence in the capital construction fund of an amount sufficient to complete the facility.

Section 1 of Chapter 87 provided for the transfer of moneys from the general fund to the state capital construction fund after the determination of the cash balance in the general fund on June 30, 1979, and if necessary, the transfer of additional moneys after June 30, 1980. The maximum sum to be transferred to the capital construction fund was \$10,730,000.00 ". . .or so much thereof as may be necessary. . ." for the cost of the construction of the projects listed in Section 2 of the Act.

Section 2 of Chapter 87 makes an appropriation out of the capital construction fund in ". . .the sum of \$10,730,000.00, or so much thereof as may be necessary. . ." to several state agencies and institutions for the construction and equipping of buildings described therein. Section 2 also provides that the construction or remodeling of a building is not to commence until a sufficient amount

of funds exists in the capital construction fund to complete a construction or remodeling project.

Section 2 makes the following further appropriation:

In addition to the appropriations and authorization set forth in this Act, there is hereby appropriated to the state agencies, departments, and institutions listed herein, any moneys available from private, federal, or other sources to construct or remodel the buildings and facilities set forth in this Act.

Our December 12, 1979, opinion concerned the construction of the first priority building listed in Section 2 of Chapter 87, the music education building at North Dakota State University. The amount exceeding \$148,600,000.00 remaining in the general fund of the state treasury on June 30, 1979, was determined by the Department of Accounts and Purchases to be \$2,414,660.64. Pursuant to Section 1 of Chapter 87 this amount was transferred to the capital construction fund. This amount was not sufficient to complete construction of the first priority facility, the NDSU music education building, as required by Section 2 of Chapter 87, before construction could be commenced.

Chapter 25 of the 1977 Session Laws makes line item appropriations to defray the expenses of the extension division and the experiment stations of the North Dakota State University. The funds appropriated by this chapter are under the control of the State Board of Higher Education as provided by Section 6(e) of Article 54 of the amendments to the state Constitution. As stated in our December 12, 1979, opinion, it was proper for the unspent income fund balance of the moneys appropriated by Chapter 25 to be considered as funds under the control of the Board of Higher Education.

As represented by your letter, the Board of Higher Education authorized the transfer of these funds from the main experiment station to a special fund for the purposes of the NDSU music building construction.

From the language of Section 2 of Chapter 87 quoted above, it is clear that the appropriation made from the capital construction fund is not the only appropriation made by the Act. The Act also appropriates and authorizes the expenditure of funds". . .available from private, federal, or other sources. . ." (emphasis added) for purposes of constructing the buildings listed in the Act. Finally the Act limits the cost of the buildings to the amount listed under "state funds," except where "federal" or "private" funds are received.

We consider that the appropriation of funds available from "other sources" may properly include other state funds such as those under the control of the Board of Higher Education.

Accordingly, it is our opinion that state funds available for the construction of the facilities described in Section 2 of

Chapter 87 are not necessarily limited to those funds deposited in the capital construction fund. The Act makes additional appropriation of funds from other sources, which may include state funds otherwise available.

Section 2 of Chapter 87 further provides:

In no event shall any building or facility exceed the cost indicated in the column "state funds" except to the extent funds may be received from federal and private sources.

Under the terms of this provision whenever other state funds are used in the construction of a building described in Section 2, the cost of the building, for purposes of state funding, shall not exceed the amount indicated under the column "state funds."

We do not foresee a "shortfall" in the capital construction fund as a result of the availability of other state funds under the control of the Board of Higher Education for construction of the NDSU music building. As a result of the availability of \$585,339.36 from Board of Higher Education moneys, it is necessary to appropriate from the capital construction fund only that amount as is necessary to meet the maximum of state funds authorized to be spent on that facility. Section 2 authorizes the maximum expenditure of \$3,000,000.00 in state funds toward the construction of the NDSU music building. Therefore it was necessary, as a result of the other state funds in the amount of \$585,339.36 being available, to appropriate from the state capital construction fund the amount of \$2,414,660.64.

From the figures represented by your letter there remains in the capital construction fund, after the dedication of the moneys therein necessary for the NDSU music building, the amount of \$7,730,000.00. By the addition of the amount of state funds authorized by the Act to be appropriated for the construction of the five remaining facilities listed therein we arrive at the figure of \$7,730,000.00. No more than \$7,730,000.00 of state funds is appropriated and authorized for the construction of the five facilities other than the NDSU music building listed in the Act. \$7,730,000.00 remains available in the capital construction fund for those purposes, after the deduction of the amount necessary from that fund to complete the construction of the music building.

It is hoped that the foregoing will be of assistance.

Sincerely,

ALLEN I. OLSON

Attorney General