

Office of the Attorney General
State of North Dakota

Opinion No. 81-120

Date Issued: October 30, 1981

Requested by: The Bank of North Dakota

--QUESTION PRESENTED--

I.

Whether there has been a valid appropriation by the legislature for the fuel production facility loan guarantee program created by Chapter 6-09.7 of the North Dakota Century Code.

II.

Whether there has been a valid appropriation by the legislature for the program to guarantee seller-sponsored loans between landowners and beginning farmers created by Sections 54-17-29, 54-17-30, and 54-17-31 of the North Dakota Century Code.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that there has not been a valid appropriation by the legislature for the fuel production facility loan guarantee program created by Chapter 6-09.7, N.D.C.C.

II.

It is my further opinion that there has been a valid appropriation by the legislature for the program to guarantee seller-sponsored loans between landowners and beginning farmers created by Sections 54-17-29, 54-17-30, and 54-17-31, N.D.C.C.

--ANALYSIS--

I.

Chapter 6-09.7, N.D.C.C., created a loan guarantee program to be administered by the Bank of North Dakota for the purpose of assisting qualified persons to construct agriculturally derived fuel production facilities.

The provisions of that chapter, in part, are as follows:

The extent of the value of all loan guarantees under this chapter may not, at any one time, exceed ten million dollars. Section 6-09.7-03, N.D.C.C.

The Bank of North Dakota shall establish and at all times maintain an adequate guarantee reserve fund in a special account in the Bank. The guarantee reserve fund shall be maintained from the lands and minerals trust created by section 15-08.1-08 and any moneys transferred from the lands and minerals trust to maintain the guarantee reserve fund are available to reimburse lenders for guaranteed loans in default. Section 6-09.7-05, N.D.C.C.

The lands and minerals trust is funded by public moneys of the state within the meaning of Article X, Section 12(1) of the North Dakota Constitution, which provides, in part, as follows:

All public moneys, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the state treasurer, and deposited by him to the credit of the state, and shall be paid out and disbursed only pursuant to appropriation first made by the legislature.

The North Dakota Supreme Court has held that an appropriation, as that term is used in Article X, Section 12(1) of the Constitution, is:

the setting apart from the public revenue of a definite sum of money for the specified object in such a manner that the officials of the government are authorized to use the amount so set apart, and no more, for that object. *State v. Holmes*, 19 N.D. 286, 123 N.W. 884 (1909); *Campbell v. Towner County*, 71 N.D. 616, 3 N.W.2d 822 (1941); *Menz v. Coyle*, 117 N.W.2d 290 (N.D. 1962).

The provisions of Chapter 6-09.7, N.D.C.C., which are set out above do not set a limitation on the amount of money that is available to provide loan guarantees as required by the Supreme Court. The limitation which is provided only sets a limit on the amount of loan guarantees which may be outstanding at any one time, and does not take into account any amounts which may be used to reimburse lenders for guaranteed loans in default. For this reason, there has not been a valid appropriation by the legislature for this program.

II.

Sections 54-17-29, 54-17-30, and 54-17-31, N.D.C.C., direct the Industrial Commission to act as a guarantor for sellersponsored loans between landowners and beginning farmers. Section 54-17-31, N.D.C.C., provides, in part, as follows:

The industrial commission shall establish and at all times maintain in the Bank of North Dakota an adequate guarantee reserve fund in a special account in the Bank. The guarantee reserve fund shall be maintained from the lands and minerals trust created by section 15-08.1-08 and any moneys transferred from the lands and minerals trust to maintain the guarantee reserve fund are appropriated to reimburse lenders for guaranteed loans in default. * * * The total amount of funds from the lands and minerals trust used as a guarantee reserve fund under sections 54-17-29, 54-17-30, and 54-17-31 may not exceed two million dollars.

These provisions constitute a valid appropriation by the legislature for this loan guarantee program. A definite amount of money has been set aside for the program and the other requirements of the Supreme Court set out above have been met in all respects.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald
Attorney General

Prepared by: Tom Tudor
Assistant Attorney General