

Date Issued: February 20, 1981 (AGO 81-16)

Requested by: T.N. Tangedahl, Executive Director, Social Service Board of North Dakota

- QUESTION PRESENTED -

Whether a legislative appropriation of federal vocational rehabilitation grant funds constitutes one of the federally recognized exceptions to the federal rule that these grant funds must be spent within one year of the federal fiscal year in which they were obligated.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a legislative appropriation of federal grant funds constitutes one of the federally recognized exceptions to the federal rule that these grant funds must be spent within one year of the federal fiscal year in which they were obligated.

- ANALYSIS -

The Social Service Board of North Dakota received certain grant funds during the 1979 federal fiscal year which ended September 30, 1979. The Social Service Board of North Dakota, through its division of Vocational Rehabilitation, included these funds in their proposed expenditures during the North Dakota state fiscal biennium, commencing July 1, 1979, through June 30, 1981.

A rehabilitation services administrative notice, RSA-PI-77-20, dated May 5, 1977, concerning the liquidation of unpaid obligations on hand at the end of the fiscal year, requires that all obligations, with certain exceptions, must be liquidated within one year of the close of the federal fiscal year in which the obligation was incurred. One of the exceptions to this policy is stated in paragraph 2 of that notice, as follows:

When State laws permit liquidation of obligations beyond one year from the close of the Fiscal Year in which the obligation was incurred. In those instances, the State agency may apply to the Regional Office for an exemption from the one-year limitation. The request for exemption shall include a copy of the applicable law and justification as to why obligations, except for Establishment and Construction, cannot be liquidated within the one-year limitation.

Article X, Section 12 of the Constitution of North Dakota states, in pertinent part:

All 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; . . . (Emphasis supplied).

The Legislative Assembly meets in regular session in odd-numbered years and, therefore, must approve the expenditures for each agency and department of the state for the next biennium. All expenditures to be made by the Social Service Board of North Dakota during the period of July 1, 1979, through June 30, 1981, would have to have been approved by the Legislative Assembly which convened in January of 1979. It, therefore, follows that any federal funds deposited into the state treasury for expenditure during the biennium would have been properly expended if disbursed pursuant to a legislative appropriation at any time during the biennium ending June 30, 1981, except in those special instances in which the Legislative Assembly placed a time limit upon the appropriation other than the biennium.

In the case of disbursement of Vocational Rehabilitation funds received from the federal government, the Legislative Assembly has approved the expenditures of these funds during the biennium ending June 30, 1981. Therefore, our state law should serve as a proper basis for an exemption to permit these funds received during the 1979 fiscal year to be disbursed during the current state biennium in which the funds were received, which ends June 30, 1981.

- 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: Thomas A. Dahle
Assistant Attorney General