

Date Issued: June 4, 1982 (AGO 82-42)

Requested by: North Dakota Industrial Commission

- QUESTIONS PRESENTED -

I.

Whether the Industrial Commission may expend more than the amount appropriated by the Legislative Assembly from the administrative fees received by the Commission from the Department of Housing and Urban Development, a federal agency, in connection with the Housing Assistance Program (HAP) in order to administer the Housing Finance Agency.

II.

Whether the Industrial Commission acting in its capacity as the Housing Finance Agency may use HAP administrative fees for the administration of the Housing Finance Agency and its purposes as well as the Housing Assistance Program.

III.

Whether unused HAP administrative fees accumulated while HAP was a part of the Social Services Department were transferred along with HAP by the 1981 Legislative Assembly to the Housing Finance Agency.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that the Industrial Commission may expend more than the amount appropriated by the Legislative Assembly for the administration of the Housing Finance Agency provided it first obtains an Emergency Commission order which allows expenditures in excess of the amount appropriated.

II.

It is my further opinion that the Industrial Commission, acting in its capacity as the Housing Finance Agency, may, within the limits of its appropriation and any Emergency Commission order, use administrative fees paid to it by the Department of Housing and Urban Development in connection with the Housing Assistance Program for the administration of the Housing Finance Agency and its programs as well as for the Housing Assistance Program.

III.

It is my further opinion that unused HAP administrative fees accumulated while HAP was a part of the Social Services Department were transferred along with HAP by the 1981 Legislative Assembly to the Housing Finance Agency and they are to be used solely by the Housing Finance Agency for state housing purposes.

- ANALYSIS -

I.

The Industrial Commission acts as a state Housing Finance Agency and manages on behalf of the State of North Dakota the state's housing finance programs pursuant to section 54-17-01 of the North Dakota Century Code. The authority of a state agency to take any action is dependent upon a statutory grant of such authority by the Legislative Assembly. First American Bank and Trust Company v. Ellwein, 198 N.W.2d. 84 (N.D. 1972). In its capacity as the Housing Finance Agency the Industrial Commission has the statutory authority to receive funds from agencies of the federal government. Section 54-17-07.6, N.D.C.C. The 1981 Legislative Assembly appropriated "\$200,000, or so much thereof as may be necessary, out of any moneys received as administrative fees by the Housing Assistance Program, to the industrial commission of the State of North Dakota . . . for the purpose of administering the housing finance agency". 1981 N.D.S.L., Chapter 58, Section 11.

Agency expenditures of funds in excess of the amount appropriated by the Legislative Assembly are governed by chapter 54-16, N.D.C.C. Section 54-16-03, N.D.C.C., states in part as follows:

54-16-03. UNLAWFUL TO EXPEND MORE THAN APPROPRIATED - MAY SECURE ORDER FROM COMMISSION FOR USE OF OTHER FUNDS - DEFICIT VOID. No state officer, or board, commissioners, directors, or other officers having the control or management of any public institution of the state, or any state activity or enterprise, or having the responsibility of disbursing or expending any money appropriated by the state, shall expend, or agree or contract to expend in connection therewith any amount in excess of the sum appropriated therefore, or use an amount appropriated for any specific purpose or fund or for any other purpose without first having secured from the emergency commission an order duly made and entered authorizing such use of the fund . . . .

Agency expenditures of funds received from the federal government in excess of any amount specifically appropriated by the Legislative Assembly are also subject to the provisions of chapter 54-16. Section 54-16-04.1, N.D.C.C.

Administrative fees received by a state agency from the Department of Housing and Urban Development, a federal agency, in connection with the Housing Assistance Program are unique, as are any surplus funds generated from housing programs. Such funds are not collected by the state directly from its residents as are state taxes and fees and are not

used to defray general expenses of state government. Rather, these administrative fees are purely federal funds which are received from the federal government. As such, it is entirely appropriate that the Emergency Commission be more liberal in authorizing expenditures of these funds to fulfill the statutory purposes of the Housing Finance Agency.

It is therefore my opinion that the Industrial Commission acting in its capacity as the Housing Finance Agency may expend more than the amount appropriated by the Legislative Assembly in order to administer the Housing Finance Agency provided that it first obtain an Emergency Commission order allowing the expenditure of funds received from the Department of Housing and Urban Development in excess of the amount specifically appropriated by the Legislative Assembly.

## II.

The Legislative Assembly included the administration of the Housing Administration Program within the Housing Finance Agency responsibilities of the Industrial Commission. The Legislative Assembly appropriated \$8,555,793.00 from funds derived from federal funds and other income of the Industrial Commission in order to defray the expenses of the Housing Assistance Program. 1981 N.D.S.L., Chapter 58, Section 10. Additionally, the Legislative Assembly appropriated \$200,000 of the moneys received from the federal government as administrative fees in connection with the Housing Assistance Program "for the purposes of administering the Housing Finance Agency." 1981 N.D.S.L., Chapter 58, Section 11. Clearly, the Legislative Assembly intended that the additional \$200,000 appropriation of funds derived from administrative fees received from the Department of Housing and Urban Development in connection with the Housing Assistance Program should be used by the Industrial Commission to defray expenses incurred in connection with the execution of Housing Finance Agency programs other than HAP.

Administrative fees paid by the Department of Housing and Urban Development in connection with the HAP program are calculated on the basis of the number of housing units which are a part of the program, rather than on the basis of actual expenses incurred to administer the Housing Assistance Program. The HAP administrative fees are to be used by the Housing Finance Agency for making payments to owners, reexamining incomes, providing housing information and assistance, reinspecting leased units, receiving replacement families into the Housing Assistance Program, and for meeting administrative overhead costs as provided for in the handbook of the U.S. Department of Housing and Urban Development, Public Housing Agency Administrative Procedures Handbook for the Section 8 Existing Housing Program, Handbook 7420.7, November 1979, pages 8-7. The Housing Finance Agency may, to the extent that the administrative fees paid to it in connection with the Housing Assistance Program are not required for the specified activities, "spend any unused portion of such fee for any state housing purpose consistent with state and local law." *Id.* Since the expenditure of the appropriated surplus administrative fees, as authorized by the Legislative Assembly, is in furtherance of Housing Finance Agency purposes consistent with state law, and since such an expenditure is expressly in accordance with the provisions regarding the expenditure of

such fees as set forth in Department of Housing and Urban Development guidelines, it is my opinion that the Industrial Commission may in accordance with its appropriation, expend the HAP administrative fees which it receives in order to defray the expenses which it incurs in administrating Housing Finance Agency programs as well as the Housing Assistance Program.

### III.

Since these administrative fees paid by the Department of Housing and Urban Development in connection with the HAP program are unique and are to be used solely for "any state housing purpose consistent with state and local law," these funds must follow HAP into the Housing Finance Agency which is the only agency charged with the responsibility under state law of establishing housing assistance programs. Subject to the foregoing provisions of Sections I and II of this Analysis, these administrative fees must necessarily because of the restrictions placed on them by the federal government follow HAP into the Housing Finance Agency which is the only place in state government where they can be used in accordance with the restrictions placed on them.

### - 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 questions presented are decided by the courts.

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