

Date Issued: June 24, 1982 (AGO 82-49)

Requested by: Richard A. Elkin, President  
and Bruce Hagen, Commissioner,  
Public Service Commission

- QUESTION PRESENTED -

Whether the Director of the Budget may withhold payment of a portion of the unvouchered expenses set by law for any elected state official unless that elected state official directs otherwise in a written statement signed by him.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the Director of the Budget may not withhold a portion of the unvouchered expenses set by law for any elected state official unless that elected state official directs otherwise in a written statement signed by him.

- ANALYSIS -

All public officials, including the Director of the Budget, may act only within the scope of the authority which is specifically granted to them by law. See First American Bank and Trust Company v. Ellwein, 198 N.W.2d. 84 (N.D. 1972). Section 54-44.1-12 of the North Dakota Century Code gives the Director of the Budget the power to "exercise continual control over the execution of the budget affecting the departments and agencies of the executive branch of the state government. . . ." However, this authority is limited by the final provision in section 54-44.1-12, N.D.C.C., which states as follows:

Before an allotment is made which will reduce the amount of the funds which can be disbursed pursuant to an appropriation or before an allotment disallowing a specific expenditure is made, the director must find one or more of the following circumstances to exist:

1. The moneys and estimated revenues in a specific fund from which the appropriation is made are insufficient to meet all legislative appropriations from the fund.
2. The payment or the obligation incurred is not authorized by law.
3. The expenditure or obligation is contrary to legislative intent as recorded in any reliable legislative records, documents, or other reliable evidence available.
4. Circumstances or availability of facts not previously known or foreseen by the legislative assembly which make possible the

accomplishment of the purpose of the appropriation at a lesser amount than that appropriated.

Unvouchered expenses for public officials are established by the Legislative Assembly. 1981 N.D.S.L. 1. Funds necessary to pay the sums established were appropriated to the Department of Accounts and Purchases by the Legislative Assembly. 1981 N.D.S.L. 1. Since the unvouchered expenses of public officials are established and appropriated as required by law, it is clear that the withholding of a portion of such unvouchered expense payments is an allotment which would reduce the amount of funds which are disbursed pursuant to an appropriation. Thus, such action falls directly within the requirement of section 54-44.1-14, N.D.C.C., that before such an allotment is made, the Director of the Budget must make at least one of the findings specified by section 54-44.1-14, N.D.C.C. The failure of an elected state official to direct in a written statement signed by him that he wants to receive the money appropriated does not fall within any of the provisions of section 54-44.1-14, N.D.C.C. Hence, the Director of the Budget must make the payments to elected state officials as appropriated by the Legislative Assembly without any action whatsoever by elected state officials being necessary.

- 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 Court.

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