

LETTER OPINION
94-L-88

March 31, 1994

Wayne Hokenson, Audit Director
State Auditor's Office
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Hokenson:

Thank you for your letter asking whether accumulated interest income in a county court's checking account may be used by the county judge to purchase office equipment, when such an expenditure was not approved during the county budget approval process.

In a 1987 opinion, the Attorney General determined that a checking account may be established to deposit funds received by a county court, only for the purpose of initially depositing certain fees collected by the clerk of the county court under N.D.C.C. ?? 27-07.1-11 and 11-17-04 until final payment is made to the county treasurer on a monthly basis. 1987 N.D. Op. Att'y Gen. 57.

The fees deposited in such a checking account are public funds belonging to the county. Id. Public funds include "all funds derived from . . . fees . . . or from any other source, which belong to and are the property of a public corporation." N.D.C.C. ? 21-04-01(5); 1987 N.D. Op. Att'y Gen. 57. The county is a public corporation. 1987 N.D. Op. Att'y Gen. 57. Thus, the interest "derived from" the fees deposited in the checking account also constitutes public funds belonging to the county. Cf. N.D.C.C. ? 11-22-03 (any interest accruing on moneys in any special funds deposited with the county treasurer and placed on time deposit shall be credited to the fund entitled thereto.)

Every county supported officer, including a county judge, must file annually with the board of county commissioners a departmental budget that includes an itemized statement of the estimated amount of money that will be required for the maintenance, operation, or improvement of the office for the ensuing year. N.D.C.C. ? 11-23-01. Consideration and approval of county officers' budgets are part of the annual

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county budget approval process. See N.D.C.C. ch. 11-23. "The expenditure of money by a county shall be in accordance with the annual appropriations of the board of county commissioners." N.D.C.C. ? 11-23-09. "No county expenditure may be made or liability incurred, nor may a bill be paid for any purpose, in excess of the appropriation" N.D.C.C. ? 11-23-06.

The county treasurer receives all moneys belonging to the county, from whatever source they may be derived. N.D.C.C. ? 11-14-06. The county treasurer may pay out moneys belonging to the county only on properly drawn county warrants or in any other manner provided by law. Id. "All warrants upon the county treasurer for claims against the county shall be issued by the county auditor upon the authority of properly audited and allowed claims or orders of the board of county commissioners." N.D.C.C. ? 11-25-01.

"Every county officer chargeable with money belonging to the county shall render his account to and settle with the board of county commissioners at such times as are provided by the laws of this state. He shall pay into the county treasury any balance which may be due the county" N.D.C.C. ? 11-10-17.

Based on the foregoing, it is my opinion that accumulated interest income in a county court's checking account may not be used by the county judge to purchase office equipment, when such an expenditure was not approved during the county budget approval process.

You question whether the penalty provided in N.D.C.C. ? 21-05-08 applies to this matter. N.D.C.C. ? 21-05-08 provides for a penalty for auditing and allowing a claim against a county without it being first properly itemized. In my opinion, this provision only applies to a situation where a claim is presented to a county officer authorized to allow the claim, and the county officer allows the claim without it being first properly itemized. In the current case, the claim was not even presented to the county for allowance. Thus, N.D.C.C. ? 21-05-08 does not apply. However, the

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penalty provided in N.D.C.C. ? 11-10-18 applies when there is a failure to render true accounts to the county or settle with the county therefor. See N.D.C.C. ? 11-10-18.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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