

OPINION
45-164

June 11, 1945 (OPINION)

IMPEACHMENT

RE: Duty of State Auditor to Issue Warrants

In your letter of June 8, 1945 you requested an opinion from this office relative to your right to issue warrants for the expenses now being incurred in the impeachment trial against the \$75,000.00 appropriation passed by the 1945 session of the legislative assembly, being Senate Bill 212. Under House Concurrent Resolution EE it was resolved that the Senate recess until the twenty-second day of May, 1945 at one o'clock when the Senate was to reconvene for the purpose of conducting the impeachment trial of Oscar E. Erickson.

Chapter 82 of the 1945 Session Laws (Senate Bill 212) provided a \$75,000.00 appropriation, or so much thereof as may be necessary for the payment of expenses of impeachment trials during the period ending January 1, 1946. This act was approved March 13, 1945. It was not passed as an emergency measure.

Chapter 262 of the 1945 Session Laws (Senate Bill 211) provides:

The presiding officer, except the chief justice when presiding, and members of the senate, while sitting as a court of impeachment and members of the house of representatives, each shall receive his regular per diem and mileage, plus five dollars (\$5.00) per day as reimbursement for expenses, while attending the court of impeachment. The compensation of the secretary of the senate, sergeant at arms, and all subordinate officers, clerks, stenographers, and reporters of the court and counsel employed to assist the managers and counsel selected and employed by accused with respect to his defense in his impeachment trial, shall be such amount and shall be determined upon by a vote of the members of such court, provided, however that the amount paid to the counsel employed to assist the managers and the amount paid to the counsel employed to assist the accused shall be equal. The state auditor, upon presentation of a certificate signed by the presiding officer and secretary of the senate, shall draw his warrants upon the state treasurer to pay the expense of the Senate, and the compensation of the officers, clerks, stenographers, and reporters and counsel under the provisions of this chapter."

This act was passed as an emergency measure and approved March 13, 1945, or the same day as the \$75,000.00 appropriation.

The question which now confronts you, as state auditor, is this: Is the office of the state auditor authorized to issue warrants covering the compensation and expenses mentioned and described in chapter 262 of the 1945 Session Laws? It is apparent, under the terms of chapter 262, that the senate and house of representatives intended that the expenses therein authorized were to be paid immediately upon presentation of a certificate signed by the presiding officer and the

secretary to the senate. It is further evident that the legislative assembly intended to set aside, and did set aside, funds for the payment of these expenses as evidenced by chapter 82 of the 1945 Session Laws, but through some oversight or inadvertence did not pass chapter 82 as an emergency measure. But in view of the fact that the intent of the legislative assembly is clear, it is the opinion of this office that if there are moneys in the general fund, not specifically obligated, that you have the legal right before July 1, 1945 to issue warrants for the compensation and expenses mentioned in chapter 262 of the 1945 Session Laws.

In the case of State ex rel. Birdzell v. Jorgenson, 25 N.D. 526, 142 N.W. 450, the supreme court of this state held:

It is sufficient if the intention to make the appropriation is clearly evidenced by the language employed in the statutes upon the subject, or if it is evident that no effect can possibly be given to a statute unless it be construed to make the necessary appropriations."

It is the opinion of this office that it was not the intention of the legislative assembly of 1945 to in any manner hamper or hinder the senate in the conduct of the impeachment trial as set by House Concurrent Resolution EE. And it is further the opinion of this office that you, as state auditor, have the legal right and authority to issue warrants covering the expenses and compensation provided for the conduct of this trial as is authorized by chapter 262 of the 1945 Session Laws if the same are correctly submitted to your office as therein provided, and if the same have been properly audited by the state auditing board as provided by law.

NELS G. JOHNSON

Attorney General