

**OPINION
47-111**

September 12, 1947 (OPINION)

EDUCATION

RE: Emergency Appropriation - Chap. 164 - 1947 Session

This office is in receipt of your letter of September 9, 1947, stating that a question has been raised by state Auditor Berta E. Baker and State Examiner John A. Graham, as to whether or not balances now remaining in the emergency appropriation made by chapter 30 of the 1947 S.L., same being H.B. 49, may be drawn upon for payment of the increased teacher-unit payments in accordance with the increased payments as authorized by chapter 164 of the 1947 Session Laws.

We see no occasion for this request at this time since the question was answered in detail in an opinion issued out of this office on May 29, 1947, covering the identical question, and I understand that both the state examiner and the state auditor are familiar with said opinion.

Chapter 164 of the 1947 Session Laws is an amendment of section 15-4018 of the 1943 Revised Code, as amended and reenacted by chapter 170 of the 1945 Session Laws, relating to payments from the state equalization fund on teacher-unit basis until July 1, 1947.

What we said in our opinion of May 29, 1947 is applicable to the question raised here. We have particular reference to this portion of our opinion:

It should be noted that Senate Bill 248 which was passed with an emergency amended Section 15-4018 of the North Dakota Revised Code of 1943 and increased the payments from \$120 per year to \$300 per year in schools employing one to four teachers for each grade or high school teacher unit maintained by such district and from \$100 to \$250 per year to schools employing more than four teachers for each grade or high school teacher unit. The increase in payments thus made by Senate Bill 248 made it necessary to enact another emergency measure, namely House Bill 49 which made an appropriation to provide funds for the increase in payments under Senate Bill 248.

We might add further that should there be any deficiency in any of these different funds prior to October 1, 1947 any balance remaining in the appropriation made by House Bill 49 may be used to meet any such deficiency."

Chapter 118 of the 1945 Session Laws made an appropriation for the state equalization fund in the sum of \$5,146,600.00 for the various activities enumerated there in as follows:

Vocational Agriculture	\$ 18,000.00
Vocational Home Economics	24,000.00

Occupational Information & Guide	5,000.00
Emergency Fund	500,000.00
Distribution on per Pupil	1,200,000.00
High School Tuition	2,200,000.00
Teacher-Unit Basis	1,200,000.00

The amendment by chapter 164 of the 1947 Session Laws increased the teacher-unit payments as we stated in our opinion of May 29, 1947 and as set forth herein and chapter 30 of the 1947 Session Laws which is an emergency measure, made an appropriation to provide for the increase in teacher-unit payments as provided by said chapter 164.

It should be borne in mind that all of these statutes to which I have referred, and the appropriations therein, have reference to the biennium beginning July 1, 1945 and ending June 30, 1947.

There is now a balance in the 1947 appropriation for this purpose the following amounts: In the emergency fund, \$32,459.14, in the per-pupil valuation fund, \$233,960.06, making a total of \$266,419.20.

The emergency appropriation made by chapter 30 of the 1947 session is for the state equalization fund in the sum of \$800,000 and for the emergency fund an additional sum of \$500,000 for distribution on per pupil basis.

All payments to the different activities enumerated in the state equalization fund for the biennium beginning July 1, 1945 and ending June 30, 1947 have been paid with the exception of the teacher-unit item in which there is a deficiency. And the question, as I understand, raised by Mr. Graham and Mrs. Baker at this time is whether such deficiency may be paid out of the balances remaining in the emergency fund and the per-pupil valuation fund.

This is answered by the Act itself because in its title it provides for additional distribution on teacher-unit basis of unused balances in the state equalization fund. And further, said chapter 164 is specific in that it provides for the increased payment on the teacher-unit basis for the biennium beginning July 1, 1945 and ending June 30, 1947.

It should be observed that section 2 of the Act provides that it shall be operative until July 1, 1947, but payments may be made up to October 1, 1947. Such payments, of course, would cover any deficiencies for the different activities in the equalization fund for the biennium ending June 30, 1947.

NELS G. JOHNSON
Attorney General