

**OPINION  
49-138**

April 29, 1949 (OPINION)

OLD AGE ASSISTANCE

RE: House Bill 314

Your letter of April 16 addressed to the Attorney General has been received and contents noted.

You ask this office for a construction of the provisions of House Bill 314 enacted by the 1949 Legislature. This bill is an amendment of Section 50-0713 of the North Dakota Revised Code of 1943 and increases the minimum of old age assistance from \$40 per month in case of one recipient and \$30 per month in the case of two or more to \$60 per month in case of one recipient and \$45 in case of two or more.

The statute as amended reads as follows:

"The amount of assistance which any person shall receive under the provisions of this chapter shall be sufficient, when added to all other income of the recipient, to provide such person with a reasonable subsistence compatible with decency and health. The amount of such assistance to each recipient shall not be less than a minimum of sixty dollars per month unless there is more than one recipient in a family, in which case it shall not be less than forty-five dollars a month for each recipient of the family.

This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval."

The public welfare law of this state includes a number of assistance projects, including old age assistance, and is administered by the Public Welfare Board of the state of North Dakota and the Welfare Boards of the several counties of the state.

The State Public Welfare Board is vested with broad powers and discretion as an official agency of the state in any social welfare activity. It has the power and discretion to administer, allocate and distribute any state and federal funds that may be made available for the various activities included in the broad term of public welfare.

The question, however, upon which you desire the opinion of this office is relative to old age assistance which, as we have pointed out, is one of the assistance needs included in the public welfare.

Section 50-0727 of the North Dakota Revised Code of 1943 provides for the old age assistance fund as follows:

"The state agency shall establish a fund to be known as the "North Dakota Old Age Assistance Fund". All moneys received by

the state agency for old age assistance purposes from the state of North Dakota, from any of the counties within the state, from the United States under the provisions of the Social Security Act, or from any other source, shall be placed in such fund. The treasurer of the state agency shall receive all such moneys as the same may be paid to him and shall deposit the same in such fund. The treasurer shall issue in triplicate receipts for all moneys received by him for the fund. Such receipts shall show the dates upon and the sources from which the moneys were received and there shall be delivered forthwith to the person, officer, or agency making the payment, a receipt to the executive director of the state agency, and the other receipt shall be retained by the treasurer."

In addition, section 53-0407 provides that fifty-percent of the amount collected for license fees for amusement games shall be paid to the Old Age Assistance Fund.

Your specific problem is whether or not House Bill 314 enacted by the 1949 Legislature increasing old age assistance from \$40 and \$30 per month to \$60 and \$45 is mandatory, and if mandatory, does it in fact have the legal effect of an appropriation.

You state that after the introduction of House Bill 314 your department appeared before the Social Welfare Committee of the Senate and explained fully and in detail the system of operation in the Public Welfare Department, and that if House Bill 314 should become a law, it would be necessary to increase the appropriation for old age assistance. However, no further increase was made in the appropriation for old age assistance although the Legislature was fully advised that the welfare department could not continue the program it had been following in the past in the matter of furnishing medical and hospitalization aid and at the same time operate it under a minimum old age assistance of \$60 and \$45.

Senate Bill 74 enacted by the Thirty-first Legislative Assembly appropriated a total of \$7,011,467 for general welfare purposes. This total was broken down into items for the several assistance projects and the amount of assistance for old age assistance under Senate Bill 74 is in the sum of \$4,500,000.

If the Board is to continue its program under its present scheme, which includes medical aid as well as hospitalization and also pay the increased minimum of \$45 and \$60 per month, the amount required will be greatly in excess of the appropriation of \$4,500,000.

At the Primary Election held June 25, 1940, the people of the state initiated and approved an Act earmarking sales tax moneys for schools and relief. The provision in this amendment has been incorporated into the sales tax act enacted at each subsequent legislative session and now appears in House Bill 163 enacted by the Thirty-first Legislative Assembly which is the retail sales tax law. Section 24 thereof provides that all moneys collected under the provisions of said Act shall be known as "The retail sales tax fund" and that out of this fund shall first be paid refunds under said Act and the net amount of moneys remaining after the payment of such refunds shall be a special trust fund to be used and disbursed solely for the

following purposes:

"1. Seven-twelfths of said trust fund shall be used and disbursed only for the payment of appropriations made pursuant to and for the purposes set forth in the state equalization fund law. The remaining five-twelfths of said trust fund shall be used and disbursed only for the payment of appropriations to be expended by the public welfare board for the purpose authorized by law; provided, that appropriations made from the general fund to be expended by said public welfare board shall constitute and include appropriation from said five-twelfths share of said trust fund;

"2. The state treasurer and state auditor shall make monthly transfers of all the amounts available in said trust fund, in the proportions provided herein to the state equalization fund and to be expended by said public welfare board as provided by law."

The following language in the above quoted statute is significant: "The remaining five-twelfths of said trust fund shall be used and disbursed only for the payment of appropriations to be expended by the public welfare board for the purposes authorized by law;"

This language is clear. It provides specifically that the five twelfths of the trust fund shall be used and disbursed only for the payment of appropriations to be expended by the public welfare board for purposes authorized by law. The appropriation for the Public Welfare Board is provided by Senate Bill 74; subsection 1 of section 24 of House Bill 163 quoted above provides that appropriations made from the general fund to be expended by the Public Welfare Board shall constitute and include appropriation from said five-twelfths share of said trust fund. The total amount of appropriation for public welfare made under the provisions of Senate Bill 74 is \$7,011,467, and the amount available for old age assistance out of said sum is \$4,500,000. This sum is the old age assistance fund provided for by section 50-0727, which is quoted in this opinion.

This brings us to the question as to whether or not the sum of \$4,500,000 is the total amount that may be expended for old age assistance notwithstanding the provisions of House Bill 314 which increases the minimum for old age assistance from \$30 and \$40 per month to \$45 and \$60 per month.

The members of the Public Welfare Board are satisfied that the board cannot continue to furnish medical aid and hospitalization as it has done heretofore and also comply with the provisions of House Bill 314 which increases the minimum monthly allowances. The further question presents itself whether or not it was the intention of the Legislature that such increase is in fact an appropriation to be considered as such in addition to the appropriation made by Senate Bill 74.

House Bill 314 fixes a standard by which eligibility for old age assistance should be determined, namely, a reasonable subsistence compatible with decency and health. It then fixes a minimum to each

recipient of not less than \$60 per month for one person and \$45 per month when there are two or more persons in a family.

As was held in *State Ex Rel Eckroth vs. Borge*, 69 N.D. 1, the state has the power, by legislative action, to fix a minimum standard but it also follows that where a minimum standard is fixed, the state must provide funds sufficient for the payment of such minimum standard.

The proposition before us resolves itself into this one narrow question. Is it mandatory upon the public welfare board to pay the minimum monthly allowances as provided by House Bill 314, and at the same time hold the expenditures within the appropriation made by Senate Bill 74, or is House Bill 314 an additional appropriation?

As we have pointed out, the Social Welfare Committee of the Senate was duly advised that the Public Welfare Board could not comply with the provisions of House Bill 314 and pay the minimum therein provided and keep within the appropriation and at the same time furnish medical aid and hospitalization as has been done in the past. If compliance must be made with the minimum payment, then the expense of medical aid and hospitalization for the aged must fall on the counties. The survey that you have made shows that the total amount of expenditures that would fall upon the counties would be approximately \$800,000 and the counties are not financially situated so as to be able to raise funds with which to pay this additional expenditure.

It can be argued with considerable plausibility that the increase in the minimum for old age assistance provided by House Bill 314 is an appropriation. Even this minimum of \$45 and \$60 is hardly sufficient to provide for the needs of those who are dependent on old age assistance. Our sympathy is with the aged, many of whom are pioneers in this state who through circumstances over which they have had no control, are without adequate means of support to provide for themselves the things necessary to permit them to live with some degree of comfort.

An appropriation bill has been defined as a measure before a legislative body authorizing the expenditure of public moneys and stipulating the amount, manner and purpose of the various items of expenditure. *State Ex Rel Finnegan vs. Dan Mann*, (Wis.) 264 N.W. 622. It is well settled that an appropriation in the sense that that word is used in our Constitution is the setting apart from the public revenue of a definite sum of money for a specified object in such a manner that the officials of the government are authorized to use the amount so set apart and no more for that object. See *State ex rel McDonald vs. Holmes*, 19 N.D. 286; *Campbell vs. Towner County*, 71 N.D. 616. Further, Section 186 of the Constitution provides that no public funds shall be paid out, except upon appropriation first made by the Legislature.

Under Senate Bill 74 the Thirty-first Legislative Assembly made a specific appropriation which the Public Welfare Board is authorized and directed to expend for the purposes designated. The amount designated for old age assistance is \$4,500,000.

While House Bill 314 fixes a minimum of old age assistance, it does not provide an additional appropriation. The amount required is not ascertainable since the number which may be eligible for old age assistance cannot be ascertained. There may be a considerable increase in their number and payment of the increased minimum may probably exceed the appropriation of \$4,500,000.

If the Welfare Board is required to pay the minimum provided by House Bill 314 and still keep within the specific appropriation of \$4,500,000, it would be necessary to decrease the payments for medical aid, hospitalization and other assistance, and the result would be that either the counties would have to carry this additional burden or it would be necessary to call a special session of the Legislature for the purpose of making an additional appropriation.

It is regrettable that the Legislature did not increase the appropriation for old age assistance so as to enable the Public Welfare Board to pay the minimum provided by House Bill 314, but this situation is one that this office cannot change since the power to appropriate is vested in the Legislature alone.

It is my opinion, therefore, that House Bill 314 does not meet the necessary requirements to constitute an appropriation and that, therefore, the Public Welfare Board is limited to the amount appropriated by Senate Bill 74. The question is not free from doubt and it can be definitely settled only by a judicial determination in an appropriate action brought for that purpose.

The entire situation must, therefore, be considered from a practical standpoint. In view of all the facts and circumstances, it is my opinion that the Welfare Board cannot be held to a strict compliance with the provisions of House Bill 314. However, it should administer the law so as to provide as far as possible for the needs of the aged, including medical aid and hospitalization in accordance with the practice that has been followed in the past.

WALLACE E. WARNER

Attorney General