

OPINION
51-166

May 22, 1951 (OPINION)

STATUTES

RE: Where No Appropriation in Act, Department May Petition Emergency

Your letter dated May 18, 1951 has been received. In this letter you state that under the provisions of House Bill 760 the inspection of nurseries and nursery stock was placed in the Department of Agriculture, but the bill carried no appropriation for the cost of administration.

Our supreme court in several instances has held that where an act provides that a certain salary is to be paid and where there is no specific appropriation, the declaration in the act fixing the salary is in itself an appropriation.

It might be said that when the legislature transferred the inspection of nurseries and nursery stock to the Department of Agriculture that they contemplated there would be certain costs in the administration and one might reason that it was in fact an appropriation to the same extent that where they created an office and said that the salary was to be a specific amount.

We, therefore, call your attention to Section 54-1604 N.D.C.C. which provides that any board, commission, or officer authorized to expend public funds may, if the condition warrants, petition the emergency commission, setting out the fact that an emergency exists. The term "emergency" is declared in this section to be limited to calamities at the time of making appropriations to be affected by such transfer and it seems to us that where the legislators have spoken and where they have imposed certain duties on a department, that it must necessarily follow that the emergency commission has the authority to provide for the expenses.

It cannot be contemplated that the legislature intended that the general appropriations were sufficient to carry this extra load as the appropriations for your department were studied and earmarked at a time when it was not contemplated that your department would be charged with the administration of inspection of nurseries and nursery stock.

We, therefore, believe that an emergency in fact exists and that the emergency commission would be justified in transferring sufficient funds so that you may give effect to House Bill 760.

ELMO T. CHRISTIANSON

Attorney General