

**OPINION
56-140**

March 8, 1956(OPINION)

WORKMEN'S COMPENSATION BUREAU

RE: Investments - Authority to Buy Dormitory Revenue Bonds

This is in reply to your request for an opinion on the question whether or not the bureau has the authority to make investments of its funds in dormitory revenue bonds of various educational institutions of this state as outlined in chapter 15-55 of the 1953 Supplement to the N.D.R.C. of 1943.

It is a general principle and rule of law that the governmental departments, agencies, bureaus etc. may invest excess moneys only to the extent they have authorization from the Legislature to do so.

The pertinent sections that must be considered are section 65-0431 and section 15-5508. The pertinent language in 65-0431 is

"The bureau . . . may invest excess moneys in the fund in bonds of the United States of America, bonds and mortgages or other securities the payment of which is guaranteed by the United States of America, bonds of the State of North Dakota or of any other state, or in certificates of indebtedness of the state of North Dakota, or in bonds or certificates of indebtedness of any political subdivision of the state of North Dakota." The pertinent language in 15-5508 is that ". . . Any state board, bureau, institution or industry having the power to invest public funds or the funds of such board, bureau, institution or industry, may invest such funds in bonds issued pursuant to the Act (chapter) in the same manner and under the same restrictions as are provided by law for other investments. . . ."

In reviewing the general subject matter found in chapter 15-55, of which section 15-5508 is an integral part, we immediately recognize that this provision is a general provision affecting all bureaus, boards and agencies and was passed by the 1947 Legislative Assembly as chapter 154 and approved March 6, 1947.

Section 65-431 was amended in 1947 broadening the authority for investments and such section was amended and reenacted as chapter 376 of the 1947 Legislative Assembly, approved March 11, 1947.

The contents and general nature of 65-0431, as compared to section 15-5508, are specific in nature and deal solely with the investment of workmen's compensation funds. It is noted that in sections 15-5512, 15-5513 and 15-5514 it is provided that no bonds issued under this Act shall ever become a general obligation of the state of North Dakota or its institutions and shall be payable solely out of the income and revenue as set forth in chapter 15-55.

Section 65-0431 and section 15-5508 are in conflict and are irreconcilable as to investment of workmen's compensation funds. Where statutes are deemed to be irreconcilable we must refer to the North Dakota Code, which provides in section 1-0209,

"Whenever the provisions of two or more statutes passed during the same session of the legislative assembly are irreconcilable, the statute latest in date of final enactment, irrespective of its effective date, shall prevail from the time it becomes effective."

In this respect it must be noted that 65-0431 was approved March 11, 1947, and section 15-5508 was approved March 6, 1947.

As to the controlling factor, where there is a general provision and a special provision, we again refer to the North Dakota Code, section 1-0207, which is as follows:

"Whenever a general provision in a statute shall be in conflict with a special provision in the same or in another statute, the two shall be construed, if possible, that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest legislative intent that such general provision shall prevail."

The rule and provision as announced in this section was recognized by the North Dakota Supreme Court. 74 N.D. 621 is relied upon in 75 N.D. 134 and 77 N.D. 939 and is now considered well established and settled law.

It is to be noted that in 1955 the Thirty-fourth Legislative Assembly had before it a measure, House Bill 721, which attempted to broaden the scope of the investments of the workmen's compensation fund but saw fit to defeat said measure.

It is significant that the 1957 Legislature when it had under its consideration section 65-0431 and amended it, broadening the scope of investments, did not see fit to include the purchase of said bonds in the amendment, which could have been accomplished very easily. The reasonable presumption is that it purposely did not do so.

In summary section 65-0431 is a special statute was amended and reenacted in 1947 and approved March 11, 1947. Said section is in conflict and is irreconcilable with the general provisions of section 15-5508 pertaining to dormitory bonds, etc. which was enacted in 1947 and approved March 6, 1947. Chapter 15-55 does not contain the general repeal clause and North Dakota does not favor repeal by implication. See 74 N.D. 621.

Taking all these matters into consideration together with the fact that the 1955 Legislature saw fit to defeat a bill further broadening the scope of the investments of the workmen's compensation funds we must conclude, and it is our opinion, that the workmen's compensation bureau is not authorized by law to invest its funds in the bonds referred to in section 15-5508.

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