

**OPINION
60-248**

February 10, 1960 (OPINION)

STATE GOVERNMENT

RE: Emergency Commission - Payment of Expenses of Special Labor

Law Committee from State Contingency Fund

This is in response to your letter in which you state that:

"House Concurrent Resolution 'G-2' authorized the Governor to appoint a special committee consisting of members of the Legislative Assembly, the general public, and such other persons as the Governor may determine to study and examine the labor laws of the State of North Dakota during the 1959-61 biennium and to make its report and recommendations to the Governor and to the Thirty-seventh Legislative Assembly."

You also state that no appropriation was made to pay any of the expense of this committee or of the members of the committee. You advised us that most likely the reason why no appropriation was made was because the resolution was adopted the last day of the session which was too late then to pass any additional appropriation and was also too late to amend the general budget under Senate Bill No. 1.

You then ask for an opinion whether or not upon proper application to the Emergency Commission the expenses of the members can be paid out of the state contingency fund. If so, how can the matter best be handled?

A resolution is not a law but is an opinion and wish expressed by the legislative body. In this instance the Governor was authorized to appoint a special committee consisting of members of the legislative assembly and the general public to study and examine labor laws and to make its report and recommendations to the Thirty-seventh Legislative Assembly (next session).

Being that the Governor has acted pursuant to the resolution lends some dignity to the resolution. While a resolution as such is not a law, it has been held that a resolution passed by both houses and approved by the Governor may have the effect of law (34 Atl. 2d.205). The Governor was not compelled to act but in doing so as authorized by the resolution he in effect gave approval to the Concurrent Resolution which brings it somewhat within the rule. Considering the legislative history on labor law question the Governor was amply justified in following the expression and wish of the legislature.

The North Dakota Supreme Court in considering section 25 of the North Dakota Constitution relating to the printing and distributing of publicity pamphlets held that the constitutional provision was self-executing and that it was a legal authorized expenditure and was to be carried out and paid for even though no appropriation therefor had been made (65 N.D. 190).

Here we do not have a self-executing provision. However, where action is taken pursuant to an expression and desire by the legislature it becomes an authorized act. Those appointed by the Governor acting pursuant thereto have a just claim against the state for necessary expenses in this capacity and come within the provisions of sections 44-0804 and 54-0609 as amended by the 1959 Legislature.

The next question is what funds are available which may be used for this undertaking. The 1959 Legislature by chapter 54 appropriated \$500,000.00 to the State Emergency Commission. Chapter 54-16 sets up the powers and duties of the Emergency Commission. Sections 54-1604 and 54-1609 seem to presuppose that an appropriation had been made but is insufficient to meet the demands on the department, agency, etc., because of some unforeseen calamity or unforeseen happening subsequent to the time for making appropriations. These sections were designed for existing departments, etc., which needed additional finances where an appropriation had been made. However, we see little difference between no appropriation and an insufficient appropriation under the circumstances involved here. The Legislature was confronted with a difficult situation at the time the Concurrent Resolution was adopted. In all probability the session would have had to be extended some time to go through the formality of making an appropriation. Just because the Legislature failed to make an appropriation or was unable to make an appropriation it would be unfair and unjust to expect the members of the committee to incur expenses at the state's request and benefit without reimbursement.

Under these unusual circumstances it is our opinion that the Emergency Commission in its discretion is authorized to pay the cost incurred by the members of the committee so named by the Governor. Such expenses would out of necessity be limited to sustenance and mileage. This conclusion is not to be construed as a rule establishing or formulating a policy but is based solely on the unusual circumstances involved.

As to the procedure involved, it is suggested that a formal petition be executed naming therein all of the members of the committee actively serving who are entitled to sustenance and mileage allowances and present it to the Emergency Commission. Upon approval of the Emergency Commission each members should execute a voucher which must bear the approval of the chairman of the committee. This voucher can then be submitted to the Emergency Commission for final approval and then to the Auditing Board and Auditor for approval as to form and for issuing the warrant check.

This is one suggested procedure. Any procedure following in substance as outlined above would be satisfactory. As to some of the details involved, it is recommended that

the State Auditor be consulted thereon as he has expressed a willingness to cooperate to the fullest extent.

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