

N.D.A.G. Letter to Rayl (Oct. 31, 1990)

October 31, 1990

Mr. R.L. Rayl
Director
Office of Management and Budget
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Rayl:

Thank you for your September 6, 1990, letter concerning the appropriation from the State Aid Distribution Fund (hereafter Fund). You ask whether 1989 N.D. Sess. Laws ch. 3, § 13 reduced the original appropriation authority of \$54,208,300 from the Fund. You also ask the amount the State Treasurer can distribute from the Fund - \$54,208,300 or \$52,058,300. You further ask whether the balance in the Fund that triggers the appropriation of excess revenue deposited to the Fund is \$54,208,300 or \$52,058,300.

Pursuant to the North Dakota Constitution, only the Legislature has the authority to appropriate state moneys. N.D. Const. art. X, § 12. 1989 N.D. Sess. Laws ch. 17, § 1 made an initial appropriation from the Fund for local political subdivisions of \$54,208,300.

It is my opinion 1989 N.D. Sess. Laws ch. 3, § 13, merely provides a mechanism for reducing the funds available to the Fund. Therefore upon the satisfaction of certain conditions the funds available from the Fund were reduced from \$54,208,300 to \$52,058,300.

1989 N.D. Sess. Laws ch. 3, § 13 provided that upon certification by the director of the budget of a negative ending balance of the general fund for the 1989-91 biennium and approval of the budget section of the legislative council

[T]he appropriation authority enacted by the [1989] legislative assembly is, prior to the application of section 54-44.1-12 or 54-44.1-13.1, proportionately reduced for each entity for which an appropriation from the state general fund or the state aid distribution fund was made . . . [I]n no event may the reduction in appropriation authority under this section exceed \$20,000,000. The amount of each reduction in appropriation authority must be proportional to the amounts provided in this section and . . . for each entity may not exceed the following amounts:

Payments . . . from the state aid distribution fund \$2,150,000

SECTION 14. CONTINGENT SUSPENSION. The provisions of this Act supersede sections 54-44.1-12 and 54-44.1-13.1 if it is determined

reductions are needed as provided in section 13 for appropriations from the state general fund or the state aid distribution fund If the reductions in appropriation authority provided in section 13 are not sufficient to meet the shortfall in an affected fund, the provisions of sections 54-44.1-12 and 54-44.1-13.1 are applicable for additional reductions in appropriation authority.

(Emphasis supplied).

Following the referral election in November of 1989, the conditions set forth in 1989 N.D. Sess. Laws ch. 3, § 13 were satisfied. You certified a forecast of a negative ending balance of the general fund and Fund for the 1989-91 biennium of approximately \$98,000,000 and proposed reductions in spending authority of that amount, not including revenue losses and reductions with respect to the highway fund. \$20,000,000 of the approximately \$98,000,000 in reductions was attributable to 1989 N.D. Sess. Laws ch. 3, § 13, including the \$2,150,000 reduction in the Fund. The remainder of the reductions were attributable to N.D.C.C. § 54-44.1-13.1. The proposed reductions were approved by the budget section of the Legislative Council at its December 11, 1989, meeting. Minutes of the Budget Section, Legislative Council, December 11, 1989.

The Legislature has given the director of the budget the authority to reduce the funds available to agencies under certain circumstances. N.D.C.C. §§ 54-44.1-12, 54-44.1-13.1; Letter from Nicholas J. Spaeth to Richard L. Rayl (March 16, 1990). "The authority [of the director of the budget] to reduce the funds available to agencies however, is not the authority to reduce the appropriation or change the appropriations act." Letter from Nicholas J. Spaeth to Richard L. Rayl (March 16, 1989). The Legislature also provided a third mechanism to reduce the funds available by the enactment of 1989 N.D. Sess. Laws ch. 3, § 13.

I have previously advised that an agency may spend money from the budget stabilization fund if the expenditure is "within the limits of the legislative appropriation for that agency but in excess of the amount available to the agency after . . . reductions have been made pursuant to N.D. Sess. Laws ch. 3, §§ 13, 14, and N.D.C.C. § 54-44.1-13.1." Letter from Nicholas J. Spaeth to Charles F. Mertens (March 16, 1990). Thus, while 1989 N.D. Sess. Laws ch. 3, § 13 reduced the available funds with respect to the original appropriation of \$54,208,300 to \$52,058,300 it did not reduce the appropriation as such.

Section 4 of ch. 17 of the 1989 Session Laws provides:

It is the intent of the legislative assembly that, if the amount appropriated in this Act is less than the amount deposited in the state aid distribution [fund] during the 1989-91 biennium, the legislative assembly shall provide a deficiency appropriation of the excess amount deposited . . . for the 1989-91 biennium

1989 N.D. Sess. laws ch. 17, § 4. I cannot surmise whether this attempt to bind a future

Legislature will be successful. However, to the extent that 1989 N.D. Sess. Laws ch. 17, § 4 authorizes the expenditure of all money deposited in the Fund, the treasurer is authorized to disburse up to the amount of the \$54,208,300 appropriation. This is consistent with the expressed legislative intent that any amount deposited in the Fund should be available either this biennium or next biennium for the purpose of the Fund.

This construction avoids the anomaly that would otherwise result, leaving \$2,150,000, the amount of the reduction in funds available, unexpended in the Fund.

With respect to your third question, it is my opinion that the original amount appropriated of \$54,208,000 triggers the deficiency appropriation. 1989 N.D. Sess. Laws ch. 17, § 4.

Section 4 of ch. 17 provides for a deficiency appropriation "if the amount appropriated in this Act [1989 N.D. Sess. Laws ch. 17, § 1] is less than the amount deposited in the state aid distribution [fund]." Because "the amount appropriated" in 1989 N.D. Sess. Laws ch. 17, § 1, supra at 1, was \$54,208,300, that amount triggers the appropriation of excess revenue.

In summary, the available funding from the Fund was reduced to \$52,058,300 by 1989 N.D. Sess. Law ch. 3, § 13. The intent of the so-called deficiency appropriation to disburse all deposits to the Fund allows the State Treasurer to disburse \$54,208,300. Despite the reduction in available funds the deficiency appropriation provided for in 1989 N.D. Sess. Laws ch. 17, § 4 is triggered at \$54,208,300. I trust that this answers your questions.

Sincerely,

Nicholas J. Spaeth

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