

N.D.A.G. Letter to Neumann (Nov. 8, 1990)

November 8, 1990

Mr. Dennis Neumann, Director
Centennial Trees Program
North Dakota Centennial Commission
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Neumann:

Thank you for your October 19, 1990, letter requesting my opinion on the proper deposit of the centennial tree program trust fund, and whether interest earned on that fund inures to the benefit of the state general fund or to the trust fund itself.

The special fund known as the centennial tree program trust fund was created by the Legislative Assembly in 1989. It is a special fund in the state treasury that may be expended by the centennial decade trees committee only for the purposes of defraying the costs associated with the ongoing promotion of the centennial trees program. The Legislature provided a standing and continuing appropriation of the fund to the centennial decade trees committee for its expenditure for the limited purposes provided by the law. 1989 N.D. Sess. Laws, chapter 27, section 1.

The Legislative Assembly has specifically required that moneys accruing to the special fund, known as the centennial tree program trust fund, must be deposited in the state treasury. It is therefore my opinion that all funds received by the centennial decade trees committee for the centennial tree program trust fund must be deposited with the office of the state treasurer pursuant to the above-noted statute and North Dakota Constitution, art. X, § 12. Once deposited with the state treasurer, the investment of the special fund moneys is controlled by the law relating to money held by the state treasurer.

Your next question is whether the interest earned on the special fund known as the centennial tree program trust fund inures to the benefit of the state general fund or to the centennial tree program trust fund itself. This issue is resolved by determining whether the fund in question is to be held in trust for the benefit of the fund and its beneficiaries, or whether it becomes general public money to be deposited in the general fund.

If the Legislative Assembly has been specific in the statute creating the special fund by specifying where the interest on said fund shall be deposited, the specifics of the statute govern. For example, N.D.C.C. § 52-03-01(3) provides that interest earned on the unemployment compensation fund, a special fund, must be included in that fund.

In an opinion to State Treasurer Robert E. Hanson, I noted the difficulty of making a yes or no determination on the deposit of interest earned by special funds, and provided certain guidelines for making the determination. Letter from Nicholas J. Spaeth to Robert E. Hanson (May 31, 1990). In that opinion, I noted that whether moneys in a particular fund are public moneys or moneys held in trust, depends on the provisions governing the state's receipt and holding of the funds. It was noted therein that money received in the form of a gift or grant with conditions attached fall in the category of a trust. This would include money granted to an agency for a specific purpose. Grants, by definition, would include conditions making the money subject to an equitable interest for an intended class of beneficiaries. If the money in a special fund is not public money, but is held in trust, then the interest earned on that special fund accrues to the special fund itself.

The special fund established in the state treasury known as the centennial tree program trust fund is a trust fund. The Legislative Assembly has not spoken specifically on what should become of the interest earned on that fund, but it has determined that the fund may only be used for the purpose of defraying the costs associated with the ongoing promotion of the centennial trees program. The centennial trees program is a significant part of the centennial celebration administered by the Centennial Commission. The Centennial Commission may therefore transfer funds from the Centennial Commission revolving fund to the centennial tree program trust fund. See 1990 Op. Att'y. Gen. 09.

In summary, the Legislative Assembly specifically created the centennial tree program trust fund as a trust fund. It further provided that the centennial decade trees committee had a standing and continuing appropriation for the expenditure of the fund for the limited purposes of defraying the costs of the ongoing promotion of the centennial trees program. It is therefore my opinion that the centennial tree program trust fund constitutes a fund held in trust for a specific and limited purpose. The interest earned on the fund accrues to the special fund itself, and not to the state general fund.

Sincerely,

Nicholas J. Spaeth