

OPINION
64-277

April 27, 1964 (OPINION)

WORKMEN'S COMPENSATION BUREAU

RE: Expenditures - Procedures

This is in response to your letter in which you state that the examiners of the State Auditor's office are presently making the regular annual audit and the commissioners of the Bureau request an opinion clarifying the law on the matter of the jurisdiction of the State Auditing Board with respect to the pre-audit of such administrative vouchers.

You further advise that this matter has been discussed with the Deputy State Auditor and there appears to be considerable doubt on the question and therefore an opinion is respectfully requested.

Out of necessity we must divide the expenditures of the Bureau into two classes; one pertaining to claims filed for injuries sustained in course of employment and the other for administrative expenses. As to the expenditures for claims, section 65-04-30 of the North Dakota Century Code provides that the State Treasurer shall be custodian of the fund and all disbursements therefrom shall be paid by him upon vouchers authorized by the Bureau.

The North Dakota Supreme Court in State ex rel Stearns v. Olson, 43 N.D. 619, said that disbursements from the Workmen's Compensation fund can be made without a warrant from the State Auditor where the disbursement or expense pertain to a claim for an injury sustained in course of employment. The Court here said that such claim would not have to be submitted to the Auditing Board before payment is made.

However, as to administrative expenses, sections 65-02-05 and 65-02-06 of the North Dakota Century Code provide, amongst other things, that the bureau at the expense of the fund shall provide all necessary equipment, supplies, stationery and furniture and all clerical and other held necessary to carry out the provisions of this title. It further provides that vouchers for mileage and expenses shall be sworn to and shall bear the approval of the chairman before payment is made therefor. Expenditures made under the provisions of this section, however, must be within the limitations designated by the legislative assembly in appropriation measures adopted from time to time.

The original language as found in Chapter 162 of the 1919 Session Laws provided, amongst other things, that the salaries and compensation of the members of the bureau, inspectors, examiners, * * * * clerks, stenographers and other assistance and all other expense of the bureau herein authorized * * * * shall be audited and paid out of the workmen's compensation fund * * * * in the manner prescribed for similar expenditures in other departments or branches of the state's service * * * *.

The North Dakota Supreme Court construed this language in 1922 in State ex rel v. Steen, 48 N.D. 1172, and held that bills for supplies and for expenses of a traveling auditor incurred by the Workmen's Compensation Bureau must be audited by the State Auditing Board.

In 1927 the Legislature amended the Workmen's Compensation Act and left out the language, "in the manner prescribed for similar expenditures of other departments or branches of the state's service." However, in a letter written by Mr. P.B. Garberg, Assistant Attorney General, assigned to the Workmen's Compensation Bureau, April 5, 1946, it was concluded that "it is the duty of the commissioners to fully itemize each claim and submit the same to the auditing board for audit, and upon having done so, it is our opinion that the auditing board is not vested with discretionary powers with reference to whether or not the claim should be allowed, the power being vested solely in the commissioners of the Workmen's Compensation Bureau, who having submitted to the budget board a request for a certain amount of money for a certain specific purpose, and I believe the only authority vested in the auditing board is to see that the money was properly expended for that specific purpose that the fund was intended * * * *."

This conclusion, which was approved by members of the Attorney General's office, apparently follows the decision of the Supreme Court in State ex rel v. Steen, supra, which held that administrative travel expenses of an auditor must be audited by the State Auditing Board even though there was some change in the law as to the specific language. In this respect, we also observe the provisions of section 54-06-09 of the North Dakota Century Code, as amended, which came about as an initiated measure (1932) which provides, amongst other things, that "* * * * before any allowance for any such mileage or travel expenses shall be made, the official, deputy, assistant, clerk or other employee shall file with the department of accounts and purchases an itemized statement showing the mileage traveled * * * * and the purpose thereof verified by his affidavit. The statement shall be submitted to the state auditing board for approval and shall be paid only when approved by said board." The opening paragraph of this section includes all state officials, whether elected or appointed, their deputies, assistants, clerks or other state employees entitled by law to be reimbursed for mileage for travel expense.

You would also like to call attention to section 54-14-04 of the North Dakota Century Code, which provides that "* * * * no bill, claim, account, or demand against the state shall be audited, allowed, or paid until a full itemized statement in writing has been filed with the state auditing board, unless such bill, claim, account, or demand is:

1. For a salary fixed by law;
2. Against a state owned utility, enterprise, or business project; or
3. Specifically exempt by law.

* * * ."

The Workmen's Compensation Bureau is a state owned enterprise or business project. The Court did discuss this provision very limitedly in State ex rel v. Steen, 48 N.D. 1172, but made no definite conclusions as to the application of this section to the Workmen's Compensation Bureau but in a way did indicate that the language there possibly could mean the type of utility or industry under the jurisdiction of the Industrial Commission. We do not believe that is a compelling conclusion.

We must also take into consideration the provisions of section 54-27-08 of the North Dakota Century Code, which as is material here, provides: "Except as otherwise provided, moneys shall be paid from the state treasury only upon the warrant or order prepared by the department of accounts and purchases drawn on the state treasurer.* * * *"

Without making any specific comment on this latter section as it pertains to the Workmen's Compensation Bureau, in direct response to your question, it is our opinion that the conclusions reached in the letter dated April 5, 1946, are in accordance with law. It is our further opinion that claims arising out of administrative expenses must be submitted to the Auditing Board to be audited by said board. It is our further opinion that claims for mileage and administrative expenses must bear the approval of the chairman of the Workmen's Compensation Board before payment can be made thereon.

We further conclude that the powers of the State Auditing Board are primarily to determine if the expenditure is in accordance with appropriation and that such examination should be made prior to making payment.

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Attorney General