

**OPINION
71-358**

May 19, 1971 (OPINION)

The Honorable M. F. Peterson

Superintendent

Department of Public Instruction

RE: State - School Construction Fund - Not Used for Salaries

This is in reply to your letter of May 13, 1971, in which you state the following facts and questions:

In the Session Laws of 1953, Chapter 136, the appropriations statement, section 10, provides, among other things, that the administration of the State School Construction Fund can be financed out of the income to the fund.

We have in the Department of Public Instruction a director and a secretary who administer the State School Construction Fund, and I am asking you for an official opinion relative of the utilization of construction funds for their salaries and expenses."

Chapter 136 of the 1953 Session Laws established the State School Construction Fund, section 10 of the chapter provides:

APPROPRIATION. There is hereby appropriated out of any moneys in the state equalization fund, not otherwise appropriated, the sum of five million dollars to establish the state school construction fund, which shall be a permanent and continuous fund. There is also hereby appropriated out of any moneys in the state equalization fund, not otherwise appropriated, the sum of twenty-five thousand dollars, or so much thereof as may be necessary, for the payments of costs and expenses incurred in commencing the work of the board, and administering such fund. There is also appropriated out of the state school construction fund such amount as is paid therein as interest or as much thereof as is necessary for use by the board for the cost of the administration of this Act."

This section was not printed as part of the 1953 Supplement to the N.D.R.C. of 1943, the 1957 Supplement to the N.D.R.C. of 1943 nor the N.D.C.C. In addition the parallel table in these publications make no reference to section 10 of chapter 136 of the 1953 Session Laws. The section was apparently not considered a permanent statute although the provision that the State School Construction Fund should be a permanent and continuous fund is certainly a permanent statute. There is, however, a question as to whether the last sentence of this section, which is the section with which you are concerned, is a permanent statute or whether it was effective only for the 1953-1955 biennium. We have found no legislation specifically repealing the section.

However, we do not believe the provision that an appropriation out of the State School Construction Fund of such amount as is paid therein as interest for use by the board for the cost of administration of the Act can be considered a permanent statute. We note that in 1955 the legislature made a specific appropriation for the State School Construction Fund Administration out of the State Equalization Fund. See chapter 13, 1955 Session Laws. See also chapter 18, 1959 Session Laws; chapter 63, 1961 Session Laws, and chapter 20, 1963 Session Laws. Had section 10 of chapter 136 of the 1953 Session Laws been considered a continuing appropriation of funds for administration of the State School Construction Fund, it would not appear these appropriations would have been necessary. We must therefore conclude the legislature did not intend such appropriation to be a continuing appropriation.

Beginning with 1965 we find no specific appropriation for the State School Construction Fund. It is our understanding that since that time the costs of administration of the Fund have been paid from the appropriation made to the Department of Public Instruction and we believe that is proper, since there is no other authority to pay these expenses.

As noted above, section 10 of chapter 136 of the 1953 Session Laws does not specify whether the appropriation for administrative expenses of the fund was to be considered as a continuing appropriation. The action of the legislature in specifically appropriating funds for such purpose subsequent to that time can only lead to the conclusion that they did not consider it as a continuing appropriation. It is therefore our opinion that the interest from the State School Construction Fund may not be used for payment of salaries and other administrative expenses of the fund.

HELGI JOHANNESON

Attorney General