

N.D.A.G. Letter to Patrie (Nov. 1, 1988)

November 1, 1988

Mr. William S. Patrie
Director
North Dakota Economic Development Commission
Liberty Memorial Building
State Capitol Grounds
Bismarck, ND 58505

Dear Mr. Patrie:

Thank you for your September 2, 1988, letter in which you ask whether the Small Business Training Network Corporation may be dissolved and the functions of that corporation assumed by the North Dakota Economic Development Commission (EDC). The primary question is whether EDC may collect user fees from participating small businesses and expend this revenue on the small business program's costs.

The Small Business Trading Network Corporation is primarily concerned with sponsoring training programs and providing services to small businesses throughout the state. The corporation generally charges the small businesses for such services as conducting computer searches of federal procurement history in a specific product line, converting federal military specifications from microfiche to printed copies, and sponsoring educational conferences and seminars. A primary reason for establishing the not-for-profit corporation was that EDC did not have the legal authority, other than its biennial appropriation authority, to accept the user fees and expend the collected revenue for the related program costs.

During the recent State Auditor's audit of your agency, the Auditor suggested that the corporation was not truly independent of EDC. The reason for this assertion was that the corporation's five directors consisted of the four Small Business Development subcenters' directors, who were employees of the University of North Dakota, and the state director of the Small Business Development Program, an EDC employee. The directors of the four subcenters became EDC employees on October 1, 1987. Accordingly, the State Auditor recommended that EDC divest itself of control of the corporation or, in the alternative, dissolve the corporation and assume its responsibilities internally. The second alternative, which is your preference, would require that the user fees be entered into the EDC's accounting system and be expended in accordance with its appropriation authority.

It is my opinion that EDC is authorized to assume the functions currently performed by the Small Business Training Network Corporation. N.D.C.C. § 54-34-06(2), (4), and (10). However, as you mentioned in your letter, EDC is able to perform these functions only if the revenue collected from the small businesses for services rendered can be expended pursuant to EDC's appropriation authority.

1987 N.D. Sess. Laws ch. 64, § 1, provides EDC with an appropriation of \$5,170,929 from the state's general fund, specialty funds derived from federal funds, and "other income to the Economic Development Commission." The total estimated income from sources other than the general fund is \$2,738,437. It is my opinion that any revenue collected by EDC for rendering services under the Small Business Development Program would constitute "other income to the Economic Development Commission." Accordingly, the receipt of such income would enable EDC to make use of its non-general fund appropriation authority.

If you have any further questions on this matter, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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