

**N.D.A.G. Letter to Backman (April 4, 2000)**

April 4, 2000

Mr. Rod Backman  
Director  
Office of Management and Budget  
600 East Boulevard Avenue  
Bismarck, ND 58505-0400

Dear Mr. Backman:

Thank you for your memorandum asking whether your office is authorized to enter into an interstate cooperative purchasing agreement with the Western States Contracting Alliance.

Public officials and state agencies only have such authority as is expressly given them by the constitution and statutes, together with those powers and duties which are necessarily implied from an express grant of authority. American Federation of State, County, and Municipal Employees v. Olson, 338 N.W.2d 97 (N.D. 1983). State administrative agencies are creatures of legislative action and, as such, have only such authority or power as is granted to them or necessarily implied from the grant. First Bank of Buffalo v. Conrad, 350 N.W.2d 580, 584 (N.D. 1984).

Your authority for purchasing is contained in N.D.C.C. § 54-44-04(18) and in N.D.C.C. ch. 54-44.4, together with rules adopted thereunder. These provisions relate only to the organization of a centralized purchasing service for articles which must be purchased through the Office of Management and Budget and those which may be purchased by delegation from that office. There is no implication in those provisions that the State of North Dakota may cooperatively agree with any other state for the purchase of articles under N.D.C.C. ch. 54-44.4. Cooperative purchasing with entities outside state government is authorized only with North Dakota political subdivisions that have organized a purchasing group under a joint powers agreement. N.D.C.C. § 54-44.4-02. It is therefore my opinion that your office is not authorized to enter into a cooperative interstate purchasing agreement such as that organized by the Western States Contracting Alliance.

If you want authority for this state's participation in such a cooperative purchasing agreement, I suggest you propose legislation to accomplish that purpose, possibly similar to Section 13-1-135 of the New Mexico Statutes Annotated. I am enclosing a copy of that statute for your information.

Sincerely,

Heidi Heitkamp  
Attorney General

rel/pg  
Enclosure