

**LETTER OPINION
2004-L-47**

July 9, 2004

Mr. Gene Kouba
Interim Commissioner
Department of Veterans' Affairs
PO Box 9003
Fargo, ND 58106-9003

Dear Commissioner Kouba:

The Department recently asked whether interest earnings from the veterans' postwar trust fund may be provided to a private veterans' organization to purchase a van to transport veterans. For the reasons stated below, it is my opinion that interest earnings on the veterans' postwar trust fund may be provided to a private veterans' organization for purchasing a van for transporting veterans if the Administrative Committee on Veterans' Affairs determines that the arrangement constitutes a program which is of benefit and service to veterans and is done so through an agreement which would provide assurances that the interest earnings are used only for the intended public purpose.

ANALYSIS

The veterans' postwar trust fund was added to the North Dakota Constitution in 1996. N.D.A.G. 97-F-01. It appears in the North Dakota Constitution as article X, section 25 and provides as follows:

The veterans' postwar trust fund shall be a permanent trust fund of the state of North Dakota and shall consist of moneys transferred or credited to the fund as authorized by legislative enactment. Investment of the fund shall be the responsibility of the state treasurer who shall have full authority to invest the fund only in the same manner as the state investment board is authorized to make investments. All income received from investments is to be utilized for programs which must be of benefit and service to veterans, who are defined by legislative enactment, or their dependents, and such income is hereby appropriated to the administrative committee on veterans' affairs on a continuing basis for expenditure upon those programs selected at the discretion of the administrative committee on veterans' affairs.

Article X, section 25 of the North Dakota Constitution is worded almost identically to a preexisting statute creating a veterans' postwar trust fund codified at N.D.C.C. § 37-14-14. See N.D.A.G. 97-F-01.

In your letter you referred to N.D.A.G. 93-L-313 which dealt with a similar issue of whether the Department of Veterans' Affairs could use operating expense monies appropriated to assist in the purchase of vans which would be given to the federal government for transporting veterans to VA medical facilities. The letter opinion noted that the "use of public funds is restricted by a number of state and federal constitutional provisions including Article X, Section 18 of the North Dakota Constitution, the Fourteenth Amendment of the United States Constitution and its North Dakota counterpart, Article I, Section 16." Id. Article X, section 18 of the North Dakota Constitution is the anti-gift provision¹ of the state Constitution. The previous Attorney General opinion also noted that the federal and state constitutional due process clauses require a state to expend public funds only for a public, not private, purpose. Id.

Even though N.D. Const. art. X, § 25² permits the Administrative Committee on Veterans' Affairs to use the veterans' postwar trust fund income for programs selected by the Committee that benefit and serve veterans, the other constitutional provisions also are applicable. See State ex rel. Sanstead v. Freed, 251 N.W.2d 898, 908 (N.D. 1977) (in construing constitutional provisions, courts must make every effort to take into account the entire Constitution; in construing and interpreting the Constitution, effect and meaning

¹ The use of public funds is restricted by article X, section 18 of the North Dakota Constitution, which provides:

The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor

The North Dakota Supreme Court has determined article X, section 18 does not prohibit a state, any county or city from loaning or giving its credit or making donations in connection with the state or political subdivisions' operation of any authorized industry, enterprise, or business. Gripentrog v. City of Wahpeton, 126 N.W.2d 230, 237-38 (N.D. 1964). Rather, what it does prohibit is for the state or a political subdivision to "otherwise" loan or give its credit or make donations. Id.

² This provision created a constitutional continuing appropriation of the earnings of the veterans' postwar trust fund to be spent only on programs selected by the Administrative Committee on Veterans' Affairs. N.D.A.G. 97-F-01.

must be given to every provision and courts must reconcile, if possible, apparently inconsistent provisions).

In N.D.A.G. 93-L-313, it was noted that the Department of Veterans' Affairs could not simply make a donation to assist a private veterans' organization in carrying out the transportation project, citing a number of opinions from this office construing N.D. Const. art. X, § 18. Similarly, in N.D.A.G. Letter to Hilleboe (July 30, 1984), it was noted that the Commissioner of Veterans' Affairs could not lawfully act as executive director of a private veterans' organization if activities were performed during state duty hours and used state services and supplies, because it would violate N.D. Const. art. X, § 18.

The problem in this instance is that rather than merely contracting with this private veterans' organization to provide a transportation program for the benefit and service to veterans, funds would be donated to purchase a van for transporting veterans. Thus, absent some agreement regulating its use, the van possibly might also be used by the private veterans' organization or others for purposes not related to the veterans' transportation program or that questions may arise about the use or disposition of the van when it is no longer needed or fit for transporting veterans.

As noted in N.D.A.G. 93-L-313, "[i]t may be that some type of arrangement between the respective parties could perhaps be reached to avoid any constitutional or statutory limitations. However, before any alternative arrangements for expenditure of the transportation program appropriation are made, the specific proposal should be reviewed for legal sufficiency with counsel from this office." Consistent with this observation, in my opinion, the provisions of N.D. Const. art. X, §§ 18 and 25 could be accommodated if the Administrative Committee on Veterans' Affairs and the private veterans' organization enter into an appropriate agreement to ensure that any earnings from the veterans' postwar trust fund would be used only to benefit and serve veterans (a public purpose), that the van could not be used for any other purpose, and that appropriate arrangements would be made for disposition of the van when it is no longer useful or necessary for the intended purpose.³ Alternatively, the Administrative Committee on Veterans' Affairs could agree to pay a fee for a service transportation program and avoid the potential private use problems associated with funding the purchase of a van.

³ For example, it could be specified in an agreement that the van would be used as a trade-in for another van for the same function or that if sold, the proceeds would either be returned to the Administrative Committee on Veterans' Affairs or be used for another program selected by the Committee. See also N.D.A.G. 98-F-30 (concluding a donation could be made to the Minot YMCA if the implementing ordinance was sufficiently detailed to provide supervisory controls to ensure a public purpose is met); N.D.A.G. 93-F-11 (allowing donation of sales tax proceeds to private entities for jobs development if implementing ordinance is sufficiently detailed to ensure the public purpose is met).

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Consequently, it is my opinion that interest earnings on the veterans' postwar trust fund may be provided to a private veterans' organization to purchase a van for transporting veterans if the Administrative Committee on Veterans' Affairs determines that the arrangement is a program that is of benefit and service to veterans and does so through an agreement that provides assurances that interest earnings are used only for their intended public purpose.

Sincerely,

Wayne Stenehjem
Attorney General

jff/pg

This opinion is issued pursuant to N.D.C.C. §54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).