

**LETTER OPINION
2005-L-25**

September 26, 2005

Mr. Richard J. Riha
Burleigh County State's Attorney
514 E Thayer Ave
Bismarck, ND 58501

Dear Mr. Riha:

Thank you for your letter asking whether N.D.C.C. § 11-11-14(4) authorizes the Burleigh County auditor to make weekly payments for goods and services before the Board of County Commissioners ("Board") approves the bills for those goods and services and whether that practice violates N.D.C.C. § 11-11-11(1), which requires the Board to supervise the county's fiscal affairs. For the reasons explained below, it is my opinion that paying bills before they are approved by the Board is unlawful because the Board is required by N.D.C.C. §§ 11-25-01 and 11-11-35 to approve all vouchers for paying moneys from the county treasury.

ANALYSIS

Your first question concerns whether paying bills prior to Board approval is authorized by law. In your letter you indicated that the county auditor makes weekly payments for bills submitted to the county.¹ For example, bills received in the month of June are paid on a weekly basis throughout June. Later, at the July Board meeting, the commissioners approve the June bills. As a result, many bills are paid prior to Board approval.

One of the general duties of the Board to "superintend the fiscal affairs of the county." N.D.C.C. § 11-11-11(1). In addition, the Board has the power "[t]o control the finances. . . [and] to make payments of [county] debts and expenses." N.D.C.C. § 11-11-14(4). Also, the Board is required to approve all vouchers for the payment of moneys from a county treasury and records its approval in a record book. That section provides:

¹ The Burleigh County auditor informed a member of my staff that bills for discretionary expenditures, e.g. travel, are paid on a biweekly basis after review by one member of the Board.

The board of county commissioners shall keep a book in which all orders and decisions made by it shall be recorded. Such book shall be known as "a record of the proceedings of the board of county commissioners." All orders and vouchers for the allowance and payment of moneys from the county treasury shall state on what account and to whom the allowance is made. The same shall be dated and numbered with the number of the warrant issued in payment thereof. Approval of orders and vouchers shall be recorded in the record of the proceedings and this shall be sufficient to indicate approval without requiring a majority of the board to sign or initial the orders and vouchers.

N.D.C.C. § 11-11-35. Id. Finally, state law provides:

All warrants upon the county treasurer for claims against the county shall be issued by the county auditor upon the authority of properly audited and allowed claims or orders of the board of county commissioners. . . .

N.D.C.C. § 11-25-01.² These statutes support the conclusion that all bills must be approved by the Board before they are paid. See Rolette State Bank v. Rolette County, 213 N.W. 848, 849 (1927); Rolette State Bank v. Rolette County, 218 N.W. 637 (1928).

This office has previously stated that "the applicable North Dakota statutes require approval of claims against a county prior to the payment of those claims by the county auditor." N.D.A.G. Letter to Slorby (Nov. 29, 1985). Based on the foregoing, except as explained in answer to your third question, it is my opinion that all bills for goods and services provided to the county must be approved by the Board before they are paid.³

Your second question concerns whether setting a budget gives the auditor permission to pay bills within the budget without further Board approval. Virtually all county payments are authorized under the budget of a county department or division, see N.D.C.C. §§ 11-23-01 (each county department must file a departmental budget with

² See also N.D. Const. art. X, § 12(2):

No bills, claims, accounts or demands against the state or any county or other political subdivision shall be audited, allowed, or paid until a full itemized statement in writing shall be filed with the officer or officers whose duty it may be to audit the same, and then only upon warrant drawn upon the treasurer of such funds by the proper officer or officers.

³ The state's attorney has a duty to institute an action to restrain payment of money, or recover money paid, when such payment did not receive authorization by the board of county commissioners or by law. N.D.C.C. § 11-16-01(13), (14).

the Board) and 11-23-02 (county auditor must prepare an annual budget). An interpretation that the auditor may approve bills that are within the budget would mean that almost all bills would never have to be presented to the Board for approval; thus nullifying the application of N.D.C.C. §§ 11-25-01 and 11-11-35. Statutes may not be construed in a manner that makes their application meaningless. See N.D.C.C. §§ 1-02-07 and 31-11-05(23); Stutsman County v. State Historical Society, 371 N.W.2d 321, 325 (N.D. 1985); N.D.A.G. 99-L-65. Accordingly, it is my opinion that budget approval does not authorize payment for specific goods or services unless the bill or invoice for the goods or services is specifically presented to the Board for approval as required by N.D.C.C. §§ 11-25-01 and 11-11-35.

Your third question concerns whether there are any types of bills that do not require specific approval by the Board. You specifically asked about making lease payments, paying utility bills, and issuing payroll checks.

A lease is a contract under which a lessee agrees to pay a fixed amount broken down into periodic, usually monthly, payments. Thus, when the Board approves a lease, it has given implicit approval of the monthly payments during the term of the lease. Similarly, a public utility customer agreement generally requires a consumer to pay a fixed basic monthly amount plus an additional fee based on the volume of services used (e.g., gallons of water, cubic feet of gas, kilowatt hours of electricity, or minutes of phone service).⁴ Therefore, when the Board approves an agreement to receive services from a particular utility according to that utility's rate schedule, it is understood that the Board has agreed to make payments for those services (usually monthly and within a specified time from the date of a statement) in accordance with the utility's customer service contract. The third exception relates to payroll checks. In the case of payroll checks, the Board has approved staffing levels, job classifications and pay, and in many cases approved the hiring of specific personnel with specified wages and benefits. Therefore, it is understood that the Board has given its approval for issuing monthly or biweekly checks to county employees in accordance with a specified schedule.⁵

⁴ In general, utility customers are billed each month at gross rates. See N.D.A.C. § 69-09-01-21(2) (billing for natural gas). But the customer is only required to pay the "net bill," which constitutes a discount, if the customer makes a prompt payment. Id.

⁵ My office has been advised that the Division of Local Government Audit of the State Auditor's Office considers making payments under a lease and paying utility bills before they are presented to a board to be consistent with acceptable government accounting procedures.

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Based on the foregoing, it is my opinion that making payment under a lease agreement approved by the board, paying utility bills, and issuing payroll checks does not violate the requirements of N.D.C.C. §§ 11-25-01 and 11-11-35.

Sincerely,

Wayne Stenehjem
Attorney General

mjm/vkk

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).