

**LETTER OPINION
2014-L-14**

September 30, 2014

The Honorable Robert R. Peterson
State Auditor
State Capitol
600 E Boulevard Ave. Dep't 117
Bismarck, ND 58505

Dear Mr. Peterson:

Thank you for your letter requesting my opinion on whether state agencies may expend the appropriation line item "Accrued leave payments" as it appears in section 14 of H.B. 1015 on salaries and wages, and whether a statement of intent in a Governor's veto message establishes binding legal authority. Based on the following, it is my opinion that state agencies may expend the "Accrued leave payments" line item on salaries and wages. It is my further opinion that a statement of intent included in a Governor's veto message stating which line item is to be tapped first is entitled to due consideration, but is not a matter of binding legal authority.

ANALYSIS

You first ask whether state agencies may expend the appropriation line item "Accrued leave payments" on salaries and wages.

Section 14 of H.B. 1015, as approved by both houses of the Sixty-third Legislative Assembly stated:

SECTION 14. ACCRUED LEAVE PAYMENTS LINE ITEM – PILOT PROJECT – LINE ITEM TRANSFERS – EMERGENCY COMMISSION APPROVAL. The accrued leave payments line item included in agency appropriation bills, as approved by the sixty-third legislative assembly, includes funding for a pilot project for the biennium beginning July 1, 2013, and ending June 30, 2015, for paying accrued annual leave and sick leave for eligible employees resigning, retiring, or otherwise discontinuing employment with the agency. The emergency commission may approve agency requests for line item transfers from the accrued leave payments line

item to the salaries and wages line item or other line item that includes salaries and wages funding subject to the agency providing documentation justifying the need for the funding transfer for the biennium beginning July 1, 2013, and ending June 30, 2015. For the purpose of determining salaries and wages amounts under section 54-27-10, the office of management and budget shall consider the amounts included in the accrued leave payments line item as part of the appropriation for salaries and wages.¹

The Governor, however, exercising his power to item veto under Article V, § 9 of the North Dakota Constitution,² vetoed that portion of section 14 beginning with “PILOT PROJECT” in the section title and continuing through the end of the second-to-last sentence, leaving only the last sentence of section 14. After the item veto, the following language remained,

For the purpose of determining salaries and wages amounts under section 54-27-10, the office of management and budget shall consider the amounts included in the accrued leave payments line item as part of the appropriation for salaries and wages.³

At first glance, the language remaining in section 14 suggests a line item appropriation for accrued leave payments is created under H.B. 1015 without any statutory authority for state agencies to expend it. Knowing, however, a just and reasonable result is intended in enacting a statute,⁴ I look to the statute’s legislative history⁵ and the consequences of its construction to determine its intent.⁶

The governor’s veto message states, in relevant part:

The last sentence of Section 14, which is not vetoed, confirms that accrued leave is simply a type of salary to which state employees are entitled by virtue of their employment. As a result of this item veto, both the accrued leave and salary and wages lines remain available for payment of salaries

¹ H.B. 1015, 2013 N.D. Leg. (as passed by the House and Senate, May 3, 2013).

² N.D. Const. art. V, § 9 states, in part, “The governor may veto a bill passed by the legislative assembly. The governor may veto items in an appropriation bill. Portions of the bill not vetoed become law.”

³ H.B. 1015, 2013 N.D. Leg. (as filed by the Secy. of State, May 23, 2013).

⁴ N.D.C.C. § 1-02-38(3).

⁵ The legislative history of an act may include a Governor’s veto message. See State ex rel. Johnson v. Baker, 21 N.W.2d 355, 367 (N.D. 1946) (Morris, J. Dissenting). Executive veto messages are recorded in the North Dakota House and Senate Journals and the Laws of North Dakota.

⁶ N.D.C.C. § 1-02-39(1), (3).

by any agency. Although the proposed pilot program is eliminated by this item veto, my intention is to direct agencies to rely first and foremost on the salary line and not access the accrued leave line for salary until necessary.⁷

It is my opinion the intent of the remaining language found in section 14 of H.B. 1015, as the Governor suggests, that “both the accrued leave and salary and wages lines remain available for the payment of salaries by any agency,” results in the reasonable conclusion that state agencies may indeed expend the appropriation line item “Accrued leave payments” on salaries and wages. It is further my opinion state agencies may continue to expend from the accrued leave and salary and wages lines as though the appropriations for these line items were one and the same, just as they have done in the past.

You next ask whether the governor’s statement, “my intention is to direct agencies to rely first and foremost on the salary line and not access the accrued leave line for salaries until necessary,” establishes legal authority and if it would then be illegal for agencies not to follow that intention.

While it does not establish a stand-alone legal authority, a statement of intent in a Governor’s veto message establishing which line item to tap first is given due consideration in determining the intent of legislation, just as committee hearing minutes, testimony and other forms of legislative history are considered. It is therefore my opinion that a statement of intent included in a Governor’s veto message stating which line item is to be tapped first is entitled to due consideration, but is not a matter of binding legal authority.

Sincerely,

Wayne Stenehjem
Attorney General

nrm/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.⁸

⁷ 2013 N.D. Sess. Laws ch. 508.

⁸ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).