

October 3, 2017

The Honorable Doug Burgum
Governor
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Governor Burgum:

This letter is to address the issue that arose last week regarding whether it is legally permissible for Dakota Access Pipeline, LLC to donate money to the Bank of North Dakota directly to pay down loans incurred by the Adjutant General for law enforcement support costs related to the activity associated with the construction of the Dakota Access pipeline and to provide grants to counties that experienced an emergency related to protest activities.

Dakota Access Pipeline, LLC intended to, and did, wire \$15,000,000 to the Bank of North Dakota with instructions the funds be used to pay down the loans incurred by the Adjutant General as described in HB 1024, Section 8.

North Dakota law does not prohibit a private entity from providing a gift to the state. Further, state law does not prohibit a private entity from paying down a loan incurred by the state and serviced by the Bank of North Dakota. State law gives the Bank broad authority in this area. The Bank may receive deposits from any source and “[p]erform all acts and do all things necessary, convenient, advisable, or desirable to carry out the powers expressly granted or necessarily implied” N.D.C.C. §§ 6-09-15(8), 6-09-15(9). Finally, a review of HB 2014, passed by the sixty-fifth Legislative Assembly, provides specific legislative intent on this subject.

HB 1024, Section 8, provides it was the intent of the Legislature that you and the Department of Emergency Services “accept reimbursement in the form of . . . cash . . . from nonstate sources for state costs incurred relating to unlawful activity associated with the construction of the Dakota access pipeline.” It further provides it was the Legislature’s intent that any reimbursements received by you specifically “be used to repay the Bank of North Dakota loans authorized by the emergency commission; loans in Senate Bill No. 2174 . . . and loans authorized in section 3 of [HB 1024], which were all obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline.”

Based on this information, a review of state law, and the legislative intent language found in HB 1024, it is my opinion it is permitted by law for Dakota Access Pipeline, LLC to give \$15,000,000 directly to the Bank of North Dakota to pay down the above-described loans incurred by the Adjutant General.

Sincerely,

Wayne Stenehjem
Attorney General