

**N.D.A.G. Letter to Witham (Jan. 6, 1992)**

January 6, 1992

Mr. Lyle Witham  
McHenry County State's Attorney  
P.O. Box 390  
Towner, ND 58788

Dear Mr. Witham:

Thank you for your December 17, 1991, letter. You called my attention to circumstances which oblige McHenry County to raise the salaries of two social service employees. The circumstances obliging McHenry County to raise these employees' salaries occurred after the 1992 budget was fixed when, on November 18, 1991, the State Personnel Board changed the pay grades assigned to some social service workers. You advise that the social service budget has no surplus to cover these increases.

The board of county commissioners has the authority pursuant to several statutes to constructively address this budget problem.

N.D.C.C. § 57-15-31.1 states:

Deadline date for amending budgets and certifying taxes. No taxing district shall certify any taxes or amend its current budget and no county auditor shall accept a certification of taxes or amended budget after the tenth day of October of each year if such certification or amendment results in a change in the amount of tax levied. The current budget, except for property taxes, may be amended during the year for any revenues and appropriations not anticipated at the time the budget was prepared.

Thus, a county may amend its budget to increase an appropriation after October 10 if such amendment does not result in a change in the amount of tax levied.

In addition, "[n]o county expenditure may be made or liability incurred, nor may a bill be paid for any purpose, in excess of the appropriation, except as provided in section 11-23-07." N.D.C.C. § 11-23-06.

Thus, N.D.C.C. § 11-23-07 is an exception to the prohibition on making an expenditure in excess of appropriation. Section 11-23-07 applies if the appropriation for any purpose is not sufficient to meet the expenditures required by law, and authorizes a transfer to the required fund from any other fund, with specified exceptions. Your letter did not indicate whether or not other county funds may have sufficient surplus to meet the social services salary expenditures required by law. If sufficient moneys are available in other funds, a

transfer consistent with the requirements of section 11-23-07 may be made.

In the event that moneys in other funds are unavailable for transfer pursuant to section 11-23-07 or in the event that the board of county commissioners does not desire to exercise its powers under that section, there are three avenues of funding available under N.D.C.C. ch. 50-03, County Human Services Fund. These three avenues allow a county to increase the appropriation in its human services fund pursuant to N.D.C.C. § 57-15-31.1.

The first avenue closely parallels the requirements of section 11-23-07. See N.D.C.C. § 50-03-04. It authorizes the board of county commissioners to make a transfer from any other fund in cases where the human services appropriation is not sufficient to meet expenditures required by law. There is only one significant difference between a transfer made under section 50-03-04 and one made under section 11-23-07. Under section 50-03-04, the board of county commissioners is not required to place in its records a statement of all such transfers with the reasons therefore in detail nor to report fully and specifically thereon in the published statement of its proceedings.

The second avenue under chapter 50-03 applies only where the unexpended balance in any fund or funds which may be transferred to the human services fund "is insufficient to meet an emergency created by unusual and unanticipated demands on the human services fund." N.D.C.C. § 50-03-05. In such an emergency, the board of county commissioners may authorize the expenditure of an amount in excess of budget appropriations. The county is authorized to issue special warrants to fund those expenditures.

The third avenue also requires an emergency, however, the emergency need not be due to unusual and unanticipated demands on the human services fund. Similarly, it does not require the transfer of the unexpended balance of any fund or funds in the county which may be transferred pursuant to section 50-03-04 or section 11-23-07. The county need only determine that an emergency exists and expend in any one year an amount for human services purposes that exceeds the human services appropriation. Thereafter, the appropriation for the following year, to make up the deficit caused by that expenditure, is not included within the appropriation subject to the tax levy limitation for general county purposes provided by law. See N.D.C.C. § 50-03-06. Under this section, the county commission is authorized to deficit spend for human services purposes when necessary to meet an emergency.

I trust that this letter outlines options sufficient to allow the McHenry County Commission to make a reasoned and lawful determination regarding funding the required salary increases.

Sincerely,

Nicholas J. Spaeth

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