

N.D.A.G. Letter to Sanstead (July 13, 1989)

July 13, 1989

Dr. Wayne G. Sanstead
Superintendent
Department of Public Instruction
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Dr. Sanstead:

Thank you for your March 16, 1989, letter in which you request an Attorney General's opinion as to whether the Department of Public Instruction may use direct deposit to distribute foundation aid and tuition apportionment payments to the school districts. I apologize for the delay in responding to your opinion request.

The tuition apportionment and foundation aid provisions of state law require the Office of Management and Budget (OMB) or the State Treasurer to pay each school district the amounts to which it is entitled, but those provisions do not specify the method of payment. N.D.C.C. § 15-40.1-02 requires the State Treasurer to pay the funds authorized by N.D.C.C. ch. 15-40.1 out of the general funds of the state. N.D.C.C. § 15-40.1-05 requires OMB to pay school districts certain percentages of their foundation aid entitlement by certain dates within a calendar year. Neither statute specifies the method of payment. Neither statute indicates whether direct deposit is permitted. Likewise, the tuition apportionment statute, N.D.C.C. § 15-44-03, requires OMB to pay each school district the amount to which it is entitled from the state tuition fund, but it does not specify the method of payment and does not indicate whether direct deposit may be used. N.D.C.C. § 15-44-03.

As the tuition apportionment and foundation aid provisions indicate, payment to the school districts is to be made at the direction of OMB or the State Treasurer. The statutes governing OMB and the State Treasurer do not indicate whether direct deposit may be used for foundation aid and tuition apportionment payments. Therefore, the question must be answered by looking to the general provisions governing the fiscal administration of state government.

All public moneys are required to be paid to the State Treasurer and deposited by him to the credit of the state of North Dakota. N.D. Const. art. X, 12(1). No bills, claims, or accounts may be paid except upon the warrant prepared by OMB and drawn on the State Treasurer. N.D. art. X, 12(2); N.D.C.C. § 54-27-08. N.D.C.C. § 54-27-08 provides that "moneys shall be paid from the State Treasury only upon the warrant or order prepared by the Office of Management and Budget drawn on the State Treasurer." OMB prepares warrants for payment of all claims from the executive branch of state

government. N.D.C.C. § 54-44-04(11). When a warrant is signed by the State Auditor, the State Treasurer is then required to "accept" the warrant with his signature, thus making the warrant a negotiable instrument. N.D.C.C. § 54-11-01(8), 54-27-08. If there is money in the State Treasury appropriated for the purpose, the State Treasurer may then "redeem" the warrant. N.D.C.C. § 54-11-01(9). The funds in the State Treasury are on deposit in the Bank of North Dakota. See N.D.C.C. § 6-09-07.

The general provisions governing the fiscal administration of state moneys do not specify whether direct deposit (or electronic transfer) may be used to pay moneys out of the State Treasury. Neither the constitution nor the statutes governing the fiscal administration of state moneys define the term "warrant." N.D.C.C. § 54-27-08 refers to "warrant or order" and "order and warrant-check." The context in which the term "warrant" is used, however, indicates that a warrant simply is an order by OMB directing the State Treasurer to pay the designated amount to the designated person or entity out of funds available in the State Treasury. Given this broad meaning of the term "warrant," OMB and the State Treasurer could issue a "warrant" directing the payment of foundation aid and tuition apportionment payments out of the State Treasury funds on deposit in the Bank of North Dakota by means of electronic transfer. N.D.C.C. § 6-09-34 permits the Bank of North Dakota to provide electronic fund transfer services to its customers.

Whether or not foundation aid and tuition apportionment payments to local school districts should be made by means of direct deposit (or electronic fund transfer) is left to the discretion of the State Treasurer (as the official with the authority to pay funds out of the State Treasury and the depositor of state funds in the Bank of North Dakota). If the State Treasurer agrees to the Department of Public Instruction's proposal and the Bank of North Dakota offers direct deposit services, then direct deposit procedures may be implemented for the payment of foundation aid and tuition apportionment funds to local school districts.

I hope I have adequately addressed your question. Again, I apologize for the delay in responding to your letter. If I can be of any further assistance in this matter, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

dfm