

N.D.A.G. Letter to Eiken (July 14, 1987)

July 14, 1987

Mr. Doug Eiken, Director
Parks and Recreation Department
Pinehurst Office Park
1424 West Century Avenue
Suite 202
Bismarck, North Dakota 58501

Dear Mr. Eiken:

Thank you for your letter of June 24, 1987, concerning the Department's concession fund appropriation as found in N.D.C.C. § 55-08-07.1.

The original concession fund arrangement was established by House Bill No. 1364, passed in 1971 by the Legislative Assembly. The title to that bill states:

AN ACT to provide for a revolving fund for concessions for the statepark service, and to make an appropriation.

(Emphasis supplied.) See 1971 N.D. Sess. Laws ch. 529.

The remainder of the bill essentially sets forth the language now found (before 1987 amendments) in N.D.C.C. § 55-08-07.1(1) and the last paragraph of N.D.C.C. § 55-08-07.1. See 1971 N.D. Sess. Laws ch. 529.

N.D.C.C. § 55-08-07.1 was amended one other time (before 1987 amendments), in 1975. That amendment changed the format of the section (there were previously no subsections found in the section) and added new language allowing the director to use the state parks concession fund for "repair, replacement, and maintenance of concession stands and properties contained therein." See 1975 N.D. Sess. Laws ch. 499.

Not only does the title to the original bill state that the concession fund is to be operated as a revolving fund, Mr. Dave O'Brien of the North Dakota State Park Service testified before the House Committee on State and Federal Government that it would be operated on a revolving fund basis. Hearings on H. 1364 Before the House Comm. on State and Federal Government, 42d Leg. (January 27, 1971) (Testimony of David O'Brien, North Dakota State Park Service).

The testimony on 1975 Senate Bill No. 2106 does not refer at all to the nature of the appropriation. See Hearings on S. 2106 Before the Senate Comm. on State and Federal Government, 43d Leg. (January 13, 1975).

The language of the appropriation found in N.D.C.C. § 5508-07.1 (before 1987 amendments) has remained substantially unchanged since 1971. It reads as follows:

There is hereby transferred out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of thirty thousand dollars, or so much thereof as may be necessary, to the state parks concession fund to provide the initial working capital, and such sum is hereby appropriated from the state parks concession fund for the purpose provided in this section as a standing and continuing appropriation. Any surplus in this fund in excess of thirty thousand dollars on June thirtieth of each year shall be transferred to the state park operating fund.

N.D.C.C. § 55-08-07.1.

Generally, bills establishing a revolving fund, at least as is currently the practice, more specifically refer to revolving fund language in the language of appropriation. For example, 1987 Senate Bill No. 2121 created a vocational shop revolving fund at the State Industrial School. Section 2 of that bill states as follows:

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,500.00, or so much thereof as may be necessary, to the state industrial school for the purpose of establishment of a vocational shop revolving fund as provided in this act for the biennium beginning July 1, 1987, and ending June 30, 1989.

1987 N.D. Sess. Laws ch. 66 (emphasis supplied). Additionally, section 1 of this bill refers to the establishment of the vocational shop revolving fund to purchase required parts and supplies for student vocational training projects. *Id.*

The North Dakota Parks and Recreation Department, up to the present time, has been operating its concession fund as a revolving fund. This has been so even though there has been no classic revolving fund appropriation language for the concession fund. The title of a bill is not ordinarily to be construed as part of the implementation language of the bill. Yet, the title expresses, and must express, the subject of the bill. See N.D. Const. art. IV, § 14. What is certain, in this case, is that the Legislature intended to establish a revolving fund for concessions for the state park service in 1971, the Legislature and the state park service (the predecessor agency of the North Dakota Parks and Recreation Department) believed that the language of 1971 House Bill No. 1364 established a revolving fund, and the North Dakota Parks and Recreation Department has been operating it as a revolving fund ever since. From what we have been able to learn, the North Dakota Parks and Recreation Department with the tacit consent of the Office of Management and Budget, if not the blessings and approval, operated a revolving fund for its concessions, pursuant to N.D.C.C. § 55-08-07.1, up until June 30, 1987.

Actually, the appropriation language of N.D.C.C. § 55-08-07.1 did include such key words

as "initial working capital, and such sum is hereby appropriated from the state parks concession fund for the purpose provided in this act as a standing and continuing appropriation" and "[a]ny surplus in this fund in excess of thirty thousand dollars on June thirtieth of each year shall be transferred to the state park operating fund." (Emphasis supplied.) It still includes much of this original language. It reads as follows:

The sum of fifty thousand dollars is hereby appropriated from the state parks concession fund for the purpose provided in this section as a standing and continuing appropriation. Any surplus in this fund in excess of thirty fifty thousand dollars on June thirtieth of each year shall be transferred to the state park operating fund.

See 1987 N.D. Sess. Laws ch. 666.

A review of the legislative history of House Bill No. 1194 reveals no intention on the part of the Legislative Assembly to change the method of operation of the fund. See Hearings on H B. 1194 Before the House Comm. on Natural Resources, 50th N.D. Leg. (1987). Although there was an amendment passed to the original bill (the original bill merely upped the limitation on the appropriation from \$30,000 to \$50,000), there is no indication that the legislative intent was to change the revolving fund nature of the appropriation. See id. (February 5, 1987).

The language removed by amendment reads as follow:

There is hereby transferred out of any moneys in the general fund in the state treasury not otherwise appropriated, the sum of thirty thousand dollars, or so much thereof as may be necessary, to the state parks concession fund to provide--the initial working capital, and such sum

1987 N.D. Sess. Laws ch. 666.

The deleted language seems merely a recognition that the fund is established, there is no more working capital coming from the general fund, and that thirty thousand dollars is no longer the appropriation. However, many of the key words remain, including the language requiring a transfer to the state park operating fund of the excess of the appropriation each June thirtieth.

I see nothing in the changes to N.D.C.C. § 55-08-07.1 by House Bill No. 1194 or the legislative history that would require the state parks concession fund to be treated differently than before. If the language of this section prior to the 1987 changes, coupled with the previous legislative intent, was sufficient to operate it as a revolving fund account, surely the new language is also. If the Legislative Assembly had given an indication that the revolving fund nature of the account was to change, my opinion would be different.

Therefore, it is my opinion that N.D.C.C. § 55-08-07.1, as amended by 1987 House Bill No. 1194, should be read to continue the revolving fund nature of the state park con-

cession fund.

Sincerely,

Nicholas J. Spaeth

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