

N.D.A.G. Letter to Fine (Dec. 12, 1988)

December 12, 1988

Ms. Karlene Fine
Secretary
Industrial Commission
State Capitol
Bismarck, ND 58505

Dear Ms. Fine:

Thank you for your letter of October 17, 1988, concerning the lignite research fund and expenditures from the fund.

Your first question is whether the \$707,111 referred to in 1987 N.D. Sess. Laws ch. 5, § 13 is part of the appropriation made in 1987 N.D. Sess. Laws ch. 729. In chapter 729 the Legislature established the lignite research fund. Section 4 of chapter 729 creates a new section to N.D.C.C. ch. 57-61 to read as follows:

Separate and additional coal severance tax - Lignite research contracts. There is hereby imposed upon all coal severed for sale or for industrial purposes by coal mines within the state a tax, separate from and additional to the tax imposed by section 57-61-01, of two cents per ton of two thousand pounds [907.18 kilograms]. All of the provisions of this chapter for administration of the coal severance tax apply to the tax imposed under this section. The state tax commissioner shall transfer revenue from the tax imposed by this section to the state treasurer for deposit in a special fund in the state treasury, which is hereby created, to be known as the lignite research fund. Moneys in the lignite research fund shall be available to the industrial commission for contracts with research facilities within this state. Such moneys must be used for contracts for land reclamation research projects and for lignite development research and hydroelectricity impact studies. The industrial commission shall adopt rules for submission and consideration of research proposals and entering into contracts under this section.

An appropriation is made from the lignite research fund in section 7 of chapter 729. That section states:

There is hereby appropriated out of any moneys in the lignite research fund in the state treasury, not otherwise appropriated, the sum of \$1,000,000, or so much thereof as may be necessary, to the industrial commission for the purposes of entering contracts for land reclamation research, lignite development research, and hydroelectricity impact studies under section 4

of this Act for the biennium beginning July 1, 1987, and ending June 30, 1989.

The appropriation in chapter 729, section 7 is to the Industrial Commission for the purpose of entering into contracts for land reclamation research, lignite development research, and hydroelectricity impact studies. This is clearly shown by the bill summary of House Bill 1065, which states as follows:

The bill creates a two-cent-per-ton additional coal severance tax with revenue to be deposited in a lignite research fund effective through June 30, 1989. Money in the research fund is to be available to the industrial commission to enter research contracts for lignite development research, land reclamation research and hydroelectricity impact studies. The bill appropriates \$1,000,000 to the industrial commission for these research contracts.

Legislative Council Bill Summary, H. 1065, April 13, 1987.

1987 N.D. Sess. Laws ch. 5, § 13, also makes an appropriation to the lignite research fund:

The amount appropriated in subdivision 14 of section 1 of this Act includes \$707,111, or so much thereof as may be necessary, for the purpose of funding reclamation research projects, shall be transferred by the industrial commission from the lignite research fund as created by the fiftieth legislative assembly. Such funds shall be transferred at the direction of the office of management and budget from the lignite research fund to the land reclamation research center operating fund for the biennium beginning July 1, 1987, and ending June 30, 1989.

The appropriation contained in subdivision 14 of section 1 of that bill is an appropriation to the Land Research Reclamation Center for salaries and wages, operating expenses, and equipment. The appropriation in chapter 5 appears to be separate and distinct from the appropriation in chapter 729 as it is not for the purpose of entering research contracts. The chapter 5 appropriation is to the Land Reclamation Research Center for the purpose of funding reclamation research projects by the center. The legislative history of House Bill No. 1005 (which enacted chapter 5) provides that the Land Reclamation Research Center is funded primarily from the lignite research fund established by the Legislative Assembly rather than from the general fund. The sum of \$707,111 was deleted from general fund appropriation with a corresponding increase from the lignite research fund. Proposed Senate Amendments to Engrossed H. 1005.

Section 5 of chapter 5 expresses the intent of the Legislative Assembly that the funds appropriated for the Land Reclamation Research Center be used for research projects concerning coal and (1) prime farmland soil productivity; (2) development of productivity indices for reclaimed land; (3) soil respreading and depth of soil replacement; and (4)

run-off and erosion on reclaimed land. The Land Reclamation Research Center must file an annual reporting containing the description and analysis of the conclusions reached for each reclamation research project. The Land Reclamation Research Center is conducting its own projects and not primarily entering into contracts for research as chapter 729 anticipates for the Industrial Commission.

A review of the budgeted funds for the Land Reclamation Research Center makes it clear that the center is utilizing its funding for staff to conduct projects. 1987 N.D. Sess. Laws ch. 5, § 1(14) provides as follows:

LAND RECLAMATION RESEARCH CENTER

Salaries and wages	\$ 1,263,002
Operating expenses	83,535
Equipment	3,600
Total special funds appropriation	\$ 1,350,137

A great majority of the funding is applied to salaries and wages. Thus, the funding from the lignite research fund is for the purpose of keeping the Land Reclamation Research Center a viable entity. The purpose of the appropriation in chapter 729, on the other hand, is to allow the Industrial Commission to enter into contracts with other entities to provide the relevant research. It is my opinion that these are separate purposes and as such the funds appropriated in 1987 N.D. Sess. Laws ch. 5 are not a part of the funds appropriated in 1987 N.D. Sess. Laws ch. 729.

Your letter also raises the question of whether the Industrial Commission may enter into contracts for projects which involve work that will be performed beyond the end of the biennium. The Lignite Research Tax is effective only through June 30, 1989. Appropriations from the fund are for the period of July 1, 1987, to June 30, 1989. After June 30, 1989, the Industrial Commission is prohibited from spending funds from the lignite research fund. As such, it is my opinion that the Industrial Commission may not enter into contracts where the commission is required to make a payment anytime after June 30, 1989. However, if all payments are made under the contract prior to June 30, 1989, the fact that the research extends beyond that date would not be improper.

If you have any further questions, please feel free to contact me.

Sincerely,

Nicholas J. Spaeth

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