

N.D.A.G. Letter to Sinner (Dec. 20, 1989)

December 20, 1989

Honorable George A. Sinner
Office of Governor
State Capitol
600 East Boulevard
Bismarck, ND 58505

Dear Governor Sinner:

Thank you for your December 19, 1989, letter requesting my opinion on N.D.C.C. § 54-27.2-03, which authorizes the Governor to transfer money from the budget stabilization fund to the state's general fund if the director of the Office of Management and Budget projects that general fund revenues for the biennium will be at least five percent less than estimated by the most recently adjourned Legislative Assembly. Assuming that the required revenue shortfall has occurred, you ask whether the Governor is authorized to transfer a portion of this fund to the general fund and then order its expenditure for particular purposes of state government within the limits of legislative appropriations.

N.D.C.C. § 54-27.2-03 states as follows:

54-27.2-03. Transfers and expenditures from budget stabilization fund. If the director of the office of management and budget projects that general fund revenues for the biennium will be at least five-percent less than estimated by the most recently adjourned special or regular session of the legislative assembly, and if the governor orders a transfer, the state treasurer shall transfer the appropriate funds from the budget stabilization fund to the state general fund to offset the decrease in general fund revenues. The amount transferred from the budget stabilization fund upon order of the Governor may not exceed the difference between an amount five percent below the general fund revenue projections for the biennium of the most recently adjourned special or regular session of the legislative assembly and the general fund revenue projections for the biennium by the director of the office of management and budget. The amount transferred from the budget stabilization fund upon order of the governor to the state general fund may be expended within the limits of legislative guidelines and general fund appropriations of the most recently adjourned special or regular session of the legislative assembly. Moneys in the budget stabilization fund may not be appropriated or expended except as provided in this section, but the legislative assembly may provide for transfer of all or a portion of the moneys in the budget stabilization fund to the common schools trust fund established under section 1 of article IX of the

Constitution of North Dakota.

N.D.C.C. § 54-27.2-03 establishes the maximum amount that the Governor may transfer from the budget stabilization fund to the state's general fund (i.e., "the difference between an amount five percent below the general fund revenue projections for the biennium of the most recently adjourned special or regular legislative assembly and the general fund revenue projections for the biennium by the director of the office of management and budget"). The statute does not restrict the Governor's discretion to transfer less than the established maximum amount from the budget stabilization fund. It is my opinion, therefore, that the Governor may transfer any portion of the budget stabilization fund up to the maximum amount allowed by N.D.C.C. § 54-27.2-03.

The second part of your question is whether the Governor may order that the transfer from the budget stabilization fund be expended for particular purposes of state government within the limits of legislative appropriation authority. N.D.C.C. § 54-27.2-03 provides that any money transferred from the budget stabilization fund is to "be expended within the limits of legislative guidelines and general fund appropriations." The statute does not contain any additional restrictions on how the transferred money may be expended. It is my opinion, therefore, that the Governor may order that moneys transferred from the budget stabilization fund be expended for particular purposes provided that the expenditure neither exceeds a budget unit's legislative appropriation authority nor contravenes a legislative guideline.

Sincerely,

Nicholas J. Spaeth

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