

Office of the Attorney General
State of North Dakota

Opinion No. 85-30

Date Issued: August 20, 1985

Requested by: Michael S. McIntee
State's Attorney
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--QUESTION PRESENTED--

Whether a county treasurer may transfer, upon proper authorization, investment income or interest earned prior to July 1, 1985, through the investment or deposit of the principal amount credited to a school district's special reserve fund to the school district's general fund pursuant to Senate Bill 2270.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a county treasurer may transfer, upon proper authorization, investment income or interest earned prior to July 1, 1985, through the investment or deposit of the principal amount credited to a school district's special reserve fund to the school district's general fund pursuant to Senate Bill No. 2270.

--ANALYSIS--

Section 1 of Senate Bill No. 2270 passed by the 1985 Legislative Assembly amends and reenacts N.D.C.C. § 57-19-02 to read as follows:

57-19-02. FUND DEPOSITED WITH COUNTY TREASURER. Such special reserve fund shall be deposited with the county treasurer of the county in which the school district, or the greater part of its territory, is situated, for use and benefit of the school district, to be drawn upon as provided in this chapter, and kept by such county treasurer as a separate trust fund. Moneys in such fund may be deposited, held, or invested in the same manner as the sinking fund of the district or in the purchase of shares or securities of federal savings and loan associations or state chartered building and loan associations, within the limits of federal insurance. The county treasurer shall annually, upon a resolution of the school board, pay to the school district general fund any part or all of the investment income or interest earned by the principal amount of the school district's special reserve fund. (Emphasis supplied.) 1985 N.D. Sess. Laws 622.

Senate Bill 2270 provides, among other things, for two significant acts by the county treasurer, both relevant for answering

the question presented. First, the investment holding or deposit of a school district's special reserve fund ('Fund'). Second, the annual transfer, upon resolution of the school board, of the investment income or interest earned by the fund to the school district's general fund.

A county treasurer's authority to invest the fund was established by 1951 N.D. Sess. Laws 319, § 2 which amended and reenacted Section 57-19-02 of the North Dakota Revised Code of 1943 by adding the language: 'Monies in such fund may be deposited, held, or invested in the same manner as the sinking fund of the district or in the purchase of shares or securities of federal savings and loan associations or state chartered building and loan associations, within the limits of federal insurance.' N.D.C.C. § 21-03-43 established the 'manner' for investing a 'sinking fund of the district.'

21-03-43. INVESTMENT OF SINKING FUNDS. Taking care that enough cash is retained always in the sinking fund to provide for annual payments of principal and interest, the surplus, if any, may be loaned or invested under the direction of the proper governing body as follows:

1. The outstanding bonds for the payment of which the sinking fund is required, at any price not exceeding the principal, accrued interest, and a premium not to exceed two years' interest on such bonds.

2. In interest-bearing bonds of the United States, or of the state of North Dakota, or of any municipality as defined in section 21-03-01.

3. In conformity with the provisions of chapter 21-04.

Investments of the class specified in subsection 2 shall continue a part of the sinking fund and shall be held in custody of the treasurer of the municipality. Bonds representing such investments may be sold by the governing body at any time, but the money received shall remain, until used, a part of the sinking fund.

Assuming that the county treasurer had exhibited sound fiscal management and exercised his discretion by investing or depositing the monies credited to the fund, then investment income or interest earned was credited to the balance of the fund (hereinafter referred to as 'fund earnings').

The authority of the county treasurer to transfer the fund earnings to the general fund was given by Senate Bill 2270 which allowed such authority to be exercised beginning July 1, 1985.

The language of Senate Bill 2270 allowing the transfer of fund earnings makes no distinction between pre-July 1, 1985, and post-July 1, 1985, 'investment income or interest earned.' It refers only to 'investment income or interest earned,' which accordingly would mean all fund earnings to indicate both pre-July 1 and post-July 1, 1985, earnings and income.

N.D.C.C. § 1-02-03 states as follows:

1-02-03. LANGUAGE--HOW CONSTRUED. Words and phrases shall be construed according to the context and the rules of grammar and approved usage of the language. Technical words and phrases and such other as have acquired a peculiar and appropriate meaning in law, or as are defined by statute, shall be construed according to such peculiar and appropriate meaning or definition.

See also *Mini Mart, Inc. v. City of Minot*, 347 N.W.2d 131, 141 (N.D. 1984).

If the 1985 Legislative Assembly did not want the pre-July 1, 1985, earnings or income transferred they would have stated such an intent clearly. Instead the 1985 Legislative Assembly chose to authorize the transfer of investment income or interest earned which, if the words are given their approved usage in the English language, would be all income, investment income, or interest earned contained within that special reserve fund, and that the authority to transfer the same is to be exercised beginning July 1, 1985, which is the effective date of Senate Bill 2270.

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01 which governs the actions of public officials until such time as the question presented is decided by the courts.

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Attorney General

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