

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 90-09

Date issued: March 28, 1990

Requested by: S. F. "Buckshot" Hoffner
Executive Director
North Dakota Centennial Commission

- QUESTION PRESENTED -

Whether the Centennial Commission has the authority to transfer trust fund monies derived from the sale of official commemorative items and approved centennial items from its special revolving fund into the centennial tree program trust fund.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the Centennial Commission has the authority to transfer funds from its special revolving fund into the centennial tree program trust fund.

- ANALYSIS -

The Centennial Commission's revolving fund is established by 1983 N.D. Sess. Laws ch. 583, ' 7 which states as follows:

Acceptance, expenditure of gifts, grants, bequests, and donations. Whenever any grant, devise, bequest, donation, gift, or assignment of money or other property is made to the commission, or any earnings or income accrued to the commission, the commission shall accept and receive the same in the name of the state. Any such property coming into the possession of the commission shall be deposited in the state treasury in a special revolving fund and all the money in such fund is hereby appropriated on a continuing basis to the commission for carrying out the purpose of this Act.

(Emphasis supplied.) 1983 N.D. Sess. Laws ch. 583, ' 7.

N.D. Const. art. X, ' 12, provides that all public moneys shall be "paid out and disbursed only pursuant to appropriation first made by the legislature." The Centennial Commission's revolving fund and continuing appropriation therefrom does not violate N.D. Const. art. X, ' 12. See Letter from Attorney General Nicholas J. Spaeth to S.F. Hoffner (May 23, 1988) (opinion authorizing Centennial Commission to award centennial grant moneys to various state

agencies).

The money in the revolving fund, including revenue from the sale of commemorative items, may be expended by the Commission "for carrying out the purpose of" the act authorizing the Centennial Commission. 1983 N.D. Sess. Laws ch. 583, ' 7. Therefore, the dispositive issue is whether funding the centennial tree program achieves the purpose of the Centennial Commission.

The Legislature created the Centennial Commission to "plan and promote activities in North Dakota for the 1989 centennial celebration of North Dakota statehood." N.D. Sess. Laws 583, ' 3. In 1989, the Legislature established a special fund in the state treasury known as the centennial tree program trust fund. 1989 N.D. Sess. Laws ch. 27, ' 1. The Legislature also authorized the Centennial Commission to establish a Centennial Decade Trees Committee. Id. Larry A. Kotchman, State Forester, testified that the centennial tree program was the "focal project of the state's 100th birthday celebration in 1989." Hearings on H. 1456 Before the Senate Agriculture Comm, 51st N.D. Leg., Feb. 2, 1989 (Statement of Larry A. Kotchman, State Forester).

The centennial tree program is a significant part of the centennial celebration. Thus, a transfer of funds from the Centennial Commission's revolving fund to the centennial tree program trust fund is an expenditure "for carrying out the purpose of" 1983 N.D. Sess. Laws ch. 583, ' 7.

Therefore, it is my opinion that the Centennial Commission has the authority to transfer moneys derived from the sale of official commemorative items and approved centennial items in its special revolving fund to the centennial tree program trust fund.

- EFFECT -

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

Nicholas J. Spaeth
Attorney General

Assisted by: Gregory B. Gullickson
Assistant Attorney General

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