

LETTER OPINION
93-L-135

April 19, 1993

Ms. Robin Huseby
Barnes County State's Attorney
Barnes County Courthouse
Valley City, ND 58072

Dear Ms. Huseby:

Thank you for your letter asking whether the calculation of the interim fund under N.D.C.C. ? 57-15-27 is based on each of several funds individually, or on all county funds combined (other than debt retirement and bond financing).

Employing the principles of statutory construction that conflicting provisions in pari materia are to be reconciled if possible (Puklich and Swift, P.C. v. State Tax Commissioner, 359 N.W.2d 846, 849 (N.D. 1984)), that the Legislature intends a result feasible of execution (N.D.C.C. ? 1-02-38(4)), and that the practical application of the statute by the agency enforcing it is entitled to some weight (Effertz v. North Dakota Workers Compensation Bureau, 481 N.W.2d 218, 220 (N.D. 1992)), the interim fund amount is to be calculated for each separate fund in the county budget according to the forms required by the State Auditor and the State Tax Commissioner (N.D.C.C. ?? 11-23-02, and 57-15-27).

N.D.C.C. ?? 11-23-02 and 57-15-27 provide as follows:

11-23-02. Auditor to prepare budget of county expenditures. The county auditor shall prepare annually estimates of county receipts and expenditures for the ensuing year in the form prescribed by the state tax commissioner and state auditor. Such annual budget shall set forth specifically:

1. The estimated aggregate annual expenditures

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from each fund for the current fiscal year.

2. The estimated amount of money received in the current fiscal year from all sources which is available for any purpose.

3. The amount required for each department, public office, and public official, for each public improvement, for the maintenance of each public building, structure, or institution, for the maintenance of public highways, roads, streets, and bridges, for the construction, operation, and maintenance of each public utility, and for each and every purpose authorized by law for which it is desired to raise money for the ensuing year including all contemplated undertakings proposed for the ensuing year.

4. The estimated balance standing to the credit or debit of the several funds and the estimated aggregate amount in all funds at the end of the fiscal year.

5. The amount of uncollected taxes standing to the credit of the county.

6. An estimate of the probable amount that may be received during the ensuing year from sources other than direct property taxes.

7. The aggregate amount proposed to be raised for all purposes.

8. The amount of the bonded indebtedness of the county, specifying as to each issue the purpose for which issued, the date of issue, the date of maturity, the amount originally issued, the amount outstanding, the rate of interest, and the sum necessary for interest and for sinking fund purposes.

9. The amount required for all interest and sinking fund purposes for the ensuing year.

10. The amount required to retire all other indebtedness lawfully incurred and to pay interest thereon.

11. The amount required for the cash reserve of the county.

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The county auditor shall transmit one copy of such annual budget to the state auditor no later than January first of each year.

57-15-27. Interim fund. The governing body of any county, city, school district, park district, or other municipality authorized to levy taxes, may include in its budget an item to be known as the "interim fund" which shall be carried over to the next ensuing fiscal year to meet the cash requirements of all funds or purposes to which the credit of the municipality may be legally extended, for that portion of such fiscal year prior to the receipt of taxes therein. In no case shall such interim fund be in excess of the amount reasonably required to finance the municipality for the first nine months of the next ensuing fiscal year. Such interim fund shall not be in excess of three-fourths of the current annual appropriation for all purposes other than debt retirement purposes and appropriations financed from bond sources and, for school districts, an additional twenty thousand dollars.

It is my understanding that the forms required by the State Auditor and the State Tax Commissioner provide for budgeting for counties by individual fund, and that the interim fund amount of three-fourths of the current appropriation, referred to in the form as "cash reserve", is calculated for each fund.

Although some terms in N.D.C.C. ? 57-15-27 might make it appear that the interim fund could be one whole fund for all combined purposes for a county, that interpretation is not reasonable unless a county actually budgeted one combined interim fund. Because of the requirement of N.D.C.C. ? 11-23-02 that all county budgets be prepared in the form prescribed by the State Tax Commissioner and the State Auditor, that kind of combined interim fund is not budgeted.

It is therefore my opinion that the limit on the amount of an interim fund balance is determined and calculated in the same way the county budget is created and prepared. That is, the statutory limit applies to each separate fund budgeted according to the form prescribed by the State Auditor and the State Tax Commissioner. If at the end of a budget cycle the total of cash reserve and unexpended appropriation

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exceeds the three-fourths of current annual appropriation limit, the amount in the fund can be regulated by reducing or eliminating the mill levy for the subject fund until the balance is brought into conformity with N.D.C.C. ? 57-15-27.

It is interesting to note that the 53rd Legislative Assembly has further clarified this issue by the enactment of Senate Bill 2094, which was filed with the North Dakota Secretary of State on March 5, 1993.

This bill amends N.D.C.C. ? 11-23-02 to make specific that the interim fund amount is to be calculated for each individual fund budgeted.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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