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The Honorable Wayne Stenehjem
Attorney General
State Capitol Building
Bismarck, ND 58505

Dear Attorney General Stenehjem:

I am writing to request your assistance in making a determination as to the proper classification of a specific portion of the balance of the North Dakota Legacy Fund. Specifically, I am requesting your assistance in properly classifying the Legacy Fund earnings that have been and will be earned through June 30, 2017.

Article X, section 26 of the Constitution, which creates the North Dakota Legacy Fund, provides:

1. Thirty percent of total revenue derived from taxes on oil and gas production or extraction must be transferred by the state treasurer to a special fund in the state treasury known as the legacy fund. The legislative assembly may transfer funds from any source into the legacy fund and such transfers become part of the principal of the legacy fund.
2. The principal and earnings of the legacy fund may not be expended until after June 30, 2017, and an expenditure of principal after that date requires a vote of at least two-thirds of the members elected to each house of the legislative assembly. Not more than fifteen percent of the principal of the legacy fund may be expended during a biennium.
3. Statutory programs, in existence as a result of legislation enacted through 2009, providing for impact grants, direct revenue allocations to political subdivisions, and deposits in the oil and gas research fund must remain in effect but the legislative assembly may adjust statutory allocations for those purposes.

The state investment board shall invest the principal of the North Dakota legacy fund. The state treasurer shall transfer earnings of the North Dakota legacy fund accruing after June 30, 2017, to the state general fund at the end of each biennium.

(Emphasis added.)

In reading and interpreting this section of the constitution, it appears clear the principal of the North Dakota Legacy Fund cannot be expended until after June 30, 2017 and only then with a vote of at least two-thirds of the members of each the house and senate. It also clearly states the

earnings that accrue after June 30, 2017 are to be transferred by the state treasurer at the end of each biennium.

What is left unclear and where the constitution appears to be silent is in the proper definition and classification of any and all earnings accruing from inception of the fund through June 30, 2017.

In examining the Constitution and preparing for potential future legislation, there appears to be two possibilities as to the classification of these earnings:

1. These earnings (up until June 30, 2017) become part of the principal of the fund. If this occurs they become expendable only upon a super majority vote and are subject to the fifteen percent of total principal biennial limitation. They would also be included in the calculations used to determine the fifteen percent of principal limitation.
2. These earnings remain undefined and cannot be considered part of the principal of the fund. This classification would presumably allow them to become expendable with a simple majority vote of the legislature. This would also exclude that amount from any of the calculations used to determine the fifteen percent of principal limitation.

This determination is significant for our office as we attempt to fulfill our constitutional responsibilities as it relates to transfers from the North Dakota Legacy Fund. As the potential for legislative requests for transfers from the Legacy Fund will begin with this upcoming legislative session, our office will need to identify the appropriate definition of these specific earnings to determine if we have the proper constitutional authority to complete any potential request for transfer. It will also be imperative to determine the treatment of these earnings when attempting to calculate the fifteen percent of principal expenditure limitation.

Thank you for your assistance.

Sincerely,



Kelly L. Schmidt
North Dakota State Treasurer