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STATE OF IOWA
LEGISLATIVE FISCAL BUREAU

MEMORANDUM

To: Members of the Legislative Fiscal Committee

From: Sue Lerdal

RE: 1990 Attorney General's opinion regarding transfer of funds

Date: August 29, 2000

We bring to your attention the attached 1990 Opinion of the Attorney General regarding the intradepartmental and interdepartmental transfer of funds. The issue in 1990 was the timing of the transfer of funds. The Opinion indicates that for intradepartmental transfers (within a single department) such transfers needed to be completed prior to June 30. The Opinion also indicates that although the law isn't as clear, the conclusion is reached that interdepartmental transfers (between departments) also should be completed prior to the end of the fiscal year. This issue is being raised regarding the timing of the transfer of funds of approximately \$8.5 million, the notice from the Department of Management dated August 17, 2000.

Changes to the pertinent statutory sections since the issuance of the Opinion have related to prohibiting certain transfers when the General Assembly is in session and limiting the amount of transfers for appropriations which are not considered entitlement appropriations.

Citation/Title

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***1112** Office of the Attorney General
State of Iowa

Opinion No. 90-3-8
March 14, 1990

STATE OFFICERS AND DEPARTMENTS; Transfer of an Appropriation. Iowa Code §§ 8.33, 8.36, 8.38, 8.39(1), 8.39(2) (1989). Transfer of funds pursuant to § 8.39(1) and (2) must occur prior to the end of the fiscal year in which the appropriation was made. (Peters to Varn, State Senator, and Hatch, State Representative, 3-14-90)

The Honorable Richard Varn
State Senator
State Capitol
Des Moines, Iowa 50319

The Honorable Jack Hatch
State Representative
State Capitol
Des Moines, Iowa 50319

Dear Senator Varn and Representative Hatch:

You have requested an opinion of the Attorney General concerning the transfer of an appropriation. Specifically you ask, "If a transfer between two fiscal year 1989 appropriations occurs after June 30, 1989 is this authority granted by the Code of Iowa?"

The question requires us to construe several statutory provisions. In reading statutes, every attempt should be made to give effect to each statute. Iowa Code § 4.7. The starting point in any case involving interpretation of a statute is the statute itself. *United States v. Hepp*, 497 F.Supp. 348, 349 (N.D. Iowa 1980). *aff'd* 656 F.2d 350 (8th Cir. 1981). "When a statute is plain and its meaning is clear, we do not search for meaning beyond its express terms." *State v. Tuitjer*, 385 N.W.2d 246, 247 (Iowa 1986) (citations omitted).

The transfer of an appropriation is authorized by Iowa Code § 8.39. We reviewed the criteria permitting a transfer in an opinion rendered April 30, 1979. 1980 Op.Att'yGen. 136. Paragraph one of § 8.39 permits "a whole or partial intradepartmental transfer of its unexpended appropriations. . ."

§ 8.39(1). (FN1) Paragraph two allows an interdepartmental transfer. (FN2) Section 8.39(1) provides that an intradepartmental transfer is allowed "any time during the fiscal year. . . ." Paragraph two contains no such limitation.

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The term "fiscal year" is defined by Iowa Code § 8.36 which states in relevant part:

The fiscal year of the government shall commence on the first day of July and end on the thirtieth day of June. This fiscal year shall be used for purposes of making appropriations and of financial reporting and shall be uniformly adopted by all departments and establishments of the government.

Following the principles of statutory construction set out above, §§ 8.39(1) and 8.36 should be read in harmony. Section 8.39(1) permits intradepartmental transfers but only before the end of the fiscal year, which is June 30 as defined in § 8.36. In partial answer to your question, Iowa Code § 8.39(1) does not permit intradepartmental transfers of appropriations after June 30 for appropriations of the previous fiscal year.

The situation of interdepartmental transfers under § 8.39(2) is not as straightforward. There is no stated limitation as in § 8.39(1) requiring the interdepartmental transfer to take place during the fiscal year. However, §§ 8.38 and 8.33 provide some guidance.

Section 8.38 provides in relevant part:

No state department, institution, or agency, or any board member, commissioner, director, manager, or other person connected with any such department, institution, or agency, shall expend funds or approve claims in excess of the appropriations made thereto, nor expend funds for any purpose other than that for which the money was appropriated, except as otherwise provided by law.

Under this statute, an agency may only expend funds when there is an appropriation. As the Attorney General previously opined, § 8.38 suggests "a general legislative intent to avoid contractual obligations extending into the future beyond the appropriation planning horizon." 1980 Op.Att'yGen. at 142. An agency cannot expend funds it does not have.

***1113** Section 8.33 states in pertinent part:

No obligation of any kind shall be incurred or created subsequent to the last day of the fiscal year for which an appropriation is made, except when specific provision otherwise is made in the Act making the appropriation. On August 31, or as otherwise provided in an appropriation Act, following the close of each fiscal year, all unencumbered or unobligated balances of appropriations made for that fiscal term revert to the state treasury and to the credit of the funds from which the appropriations were made. . .

Section 8.33 provides a mechanism whereby an agency is required to expend an appropriation during the fiscal year in which it was made. If the funds are not spent during the fiscal year, they revert back to the state treasury. The actual date of reversion is two months after June 30, which is the end of the fiscal year, is an

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allowing "grace period" which allows the agency to close their accounts on obligations incurred before June 30. Section 8.33 does not allow any agency to incur additional obligations after the end of the fiscal year.

Section 8.39(2) should be read in conjunction with §§ 8.38 and 8.33. An agency cannot expend funds which have not been appropriated. § 8.38. Furthermore, the obligation to transfer the funds from one agency to another must be incurred on or before June 30. § 8.33. Therefore, in order for the transferee to expend the funds, the transfer from another agency must be approved before June 30. After the date, the transferee's books are closed on the previous fiscal year's obligations. If the transferred funds were in excess of the outstanding obligations, they revert to the state treasury pursuant to § 8.33.

While this conclusion is compelled by examination of the applicable statutes, we would be remiss if we failed to acknowledge potential practical problems. Section 8.39 predates both the growth of entitlement programs and legislative commitment to generally accepted accounting principles. Both recognize that services (eg. child care, foster care) will be provided prior to June 30, but the bill for those services may not be presented until after June 30. Our understanding is that payment is to be charged against the appropriation for that fiscal year in which the service was rendered. If a transfer must be made so that these obligations may be paid, the transfer must necessarily be based on estimates of costs of those services.

In summary, transfer of funds pursuant to § 8.39(1) and (2) must occur prior to the end of the fiscal year in which the appropriation was made.

Sincerely,

Merrell M. Peters

Assistant Attorney General

(FN1) "Expert as otherwise provided by law, an appropriation or any part of it shall not be used for any other purpose than that for which it was made. However, with the prior written consent and approval of the governor and the director of the department of management, the governing board or head of any state department, institution, or agency may, at any time during the fiscal year, make a whole or partial intrdepartmental transfer of its unexpended appropriations for purposes within the scope of such department, institution, or agency." Iowa Code §§ 8.39(1).

(FN2) "If the appropriation of a department, institution, or agency is insufficient to properly meet the legitimate expenses of the department, institution, or agency, the director, with the approval of the governor, may make an interdepartmental transfer from any other department, institution, or agency of the state having an appropriation in excess of its needs, of sufficient funds to meet the deficiency." Iowa Code §§ 8.39(2).