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Last Year's Ending Balance Reflects Economic Downturn

DES MOINES—Despite spending \$3 million below legislatively appropriated levels, the severe downturn in the national and state economy is responsible for the state's revenue to fall \$59 million below projections in state fiscal year 2001. As steps are taken to closeout state fiscal year 2001, more than \$405 million remains in the state's reserve accounts.

Unaudited statements released today by the department of management show expenditures fell below budgeted amounts by \$3 million, but dramatic and unexpected drops in revenue created a deficit of \$59 million. Corporate income tax, personal income tax and sales tax represented most of the shortfall. No one foresaw the severity of the revenue shortfall.

"No one expected revenue to drop so far, so fast," said Cynthia Eisenhower, director of the department of management. "Officials with the federal government also missed the shortfall in national revenues."

The state's reserve accounts have been used for cash flow purposes since they were created, and will be used to cover this \$59 million shortfall, according to a ruling by Attorney General Tom Miller.

Even though the state fiscal year officially ended on June 30, 2001, the department of revenue and finance collects tax payments and other receipts that are paid after June 30, but represent fiscal year 2001 liabilities. The department also pays bills received after June 30, for services received during fiscal year 2001. Once the receipts are collected and the bills are paid, the books are closed and the final results are audited and published in the Comprehensive Annual Financial Report (CAFR) in December.

"Iowa's financial condition is strong, especially compared to other Midwestern states," she added. "Wisconsin, Michigan, Nebraska, Missouri, Indiana and Ohio are suffering similar economic situations."

Economic forecasters in these states also missed the extent of the deficit—the result of a slowing national economy that has hit the Midwest particularly hard. Revenue from income taxes, corporate taxes, and sales taxes were much lower in the second half of the year than anticipated, resulting in Iowa's largest drop in revenues in 18 years.

Wisconsin sold its tobacco settlement proceeds and used the resulting \$450 million to balance the budget (Milwaukee Journal Sentinel, 9-27-01). Michigan projects \$500 million deficit (Detroit News, 8-23-01). Missouri's governor says that state department will have to cut as much as \$220 million from their spending plans for the current year (Kansas City Star, 8-23-01). The state of Indiana has drained its rainy day funds and its governor ordered 7 percent across the board cuts (exempting education and property tax relief) to help cover its deficit (Indianapolis Star, 8-16-01). Ohio faces a projected \$1 billion shortfall over the next 21 months, according to that state's governor (Cleveland Plain Dealer, 9-27-01).

According to a report published by the Nelson Rockefeller Institute of Government, state tax revenue growth in the last quarter was the weakest in eight years. The economic slowdown, which previously had been concentrated in the Midwest and Southeast, has now spread to nearly the entire country.

STATE OF IOWA
ESTIMATED CONDITION OF THE GENERAL FUND
FINANCIAL SUMMARY
(\$ in Millions)

	Estimated 2001 October
<hr/> RESOURCES <hr/>	
Revenue Estimating Conference	5,114.5
Excess From Economic Emergency Fund	170.7
Accrued Revenue Changes	(26.2)
Transfers	110.3
Refunds of Taxes Paid (Net)	(550.7)
Total Resources	<hr/> 4,818.6
 <hr/> EXPENDITURES <hr/>	
Enacted Appropriations	4,882.4
Deappropriations	(4.1)
Supplemental Appropriations	2.1
Standing Appropriations Closing Entries	6.6
Total Appropriations	<hr/> 4,887.0
Estimated Reversions:	
Regular Reversions	(9.0)
Expenditures From Appropriations	<hr/> 4,878.0
Ending General Fund Balance	<hr/> (59.4)
 Reserve Fund Balances:	
Cash Reserve Fund	232.4
Economic Emergency Fund	173.0
Total Reserve Fund Balances	<hr/> 405.4



THOMAS J. MILLER
ATTORNEY GENERAL

Department of Justice

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October 5, 2001

Cynthia Eisenhauser
Director
Department of Management
State Capitol
LOCAL

Dear Ms. Eisenhauser:

You have requested a formal opinion of the Attorney General regarding use of the State's reserve funds for cash flow purposes. In the letter requesting our opinion, you state that "the Governor and the Legislature are required to use the revenue estimate of the State's Revenue Estimating Conference." You further advise us that "the official estimate for March 14, 2001, coupled with legally enacted appropriations," projected "a positive ending balance for Fiscal Year 2001" according to "both the Legislative Fiscal Bureau and the Department of Management."

You indicate that the State's largest source of revenue, the personal income tax, is not received until late in the fiscal year. Because of this, on April 1, when the final quarterly allotments are made to departments and other entities, actual cash on hand in the general fund is not sufficient to make those allotments. You further advise us that, historically, the Department of Management has utilized money for cash flow purposes from the economic emergency fund, pursuant to Iowa Code section 8.55(3) (2001), and from the cash reserve fund, pursuant to section 8.56(3), until the anticipated tax revenues are received. In keeping with this practice, the Department of Management made the allotments for the final quarter of Fiscal Year 2001 to pay the State's legal obligations for which appropriations were made by the Legislature.

According to your letter, it now appears that the actual general fund revenues were not sufficient to cover these legally allotted expenses.

You have posed two questions:

1. "Does the language in 8.55 and 8.56 allow the Economic Emergency Fund and the Cash Reserve Fund to be used for determining the cash position of the State, and, when official revenue estimates and other budget assumptions show a positive General Fund ending balance for the fiscal year, may those funds be used during the fiscal year for making allotments to pay obligations for which appropriations have been made?"
2. "If, when actual revenue collections, transfers, accruals, and standing appropriations are finalized and the General Fund is found to not have had sufficient resources to pay all legally allotted and appropriated items, do these statutes direct how the State should account for the actual payment of these obligations?"

APPLICABLE LAW

The Iowa economic emergency fund is created by Iowa Code section 8.55. The statute creating this fund was enacted in 1984. 1984 Iowa Acts, 70th G.A., ch.1305, § 21. The fund is considered separate from the general fund of the State. Iowa Code § 8.55 (1)(2001). Money in the economic emergency fund may be appropriated only in the fiscal year for which the appropriation is made and only for emergency expenditures. Iowa Code § 8.55(3)(2001). The statute contains one exception to these restrictions on the use of money in the fund:

However, . . . the balance in the Iowa economic emergency fund may be used in determining the cash position of the general fund of the state for the payment of state obligations.

Iowa Code § 8.55(3)(2001).

The cash reserve fund is created by Iowa Code section 8.56. It was adopted in 1992. 1992 Iowa Acts, 74th G.A., ch. 1227, § 6. The cash reserve fund is also separate from the general fund of the State. Iowa Code § 8.56 (1). The statute creating the cash reserve fund contains a number of restrictions on the use of money in the fund. See Iowa Code §§ 8.56(1), (3), (4)(2001). The statute contains the same exception for the use of money in the fund that is found in the economic emergency fund:

However, . . . the balance in the cash reserve fund may be used in determining the cash position of the general fund of the state for payment of state obligations.

Iowa Code § 8.56(3)(2001).

Section 8.56(3) contains an additional requirement regarding the use of money in the cash reserve fund that is not found in the economic emergency fund:

Moneys in the cash reserve fund may be used for cash flow purposes provided that any moneys so allocated are returned to the cash reserve fund by the end of each fiscal year.

Iowa Code § 8.56(1)(2001).

ANALYSIS

I

Your first question is whether sections 8.55(3) and 8.56(3) authorize the use of money from the economic emergency fund and the cash reserve fund for cash flow purposes until anticipated tax revenues are received, specifically, to make allotments to pay legal obligations for which appropriations have been made by the Legislature.

Both section 8.55(3) and section 8.56(3) contain restrictions on the use of reserve funds. Both of these statutes contain precisely the same exception to these restrictions:

However, . . . the balance in the . . . reserve fund may be used in *determining the cash position of the general fund for the payment of state obligations.*

Iowa Code §§ 8.55(3), 8.56(3)(2001). (Emphasis added).

The precise meaning of this statutory exception, standing alone, is ambiguous. It is unclear what is meant by the language of the statute which allows reserve funds to be used in "determining" the cash position of the State, and the phrase "cash position" is not defined in the statute.

Where the language of a statute is ambiguous or where reasonable persons would be uncertain as to its meaning, it is necessary to interpret it according to rules of statutory construction. *Holiday Inns Franchising, Inc. v. Branstad*, 537 N.W.2d 724, 728 (Iowa 1995). The primary goal of statutory construction is to ascertain the intent of the legislature. *Miller v. Westfield Insur. Co.*, 606 N.W.2d 301, 303 (Iowa 2000). In determining the legislative intent, a statute should not be read in isolation; rather, all parts of the statute should be considered together. *General Electric Co. v. Iowa State Bd. of Tax Review*, 492 N.W.2d 417, 420 (Iowa 1992). In interpreting the words of a statute, every attempt should be made to give effect to every

word in the statute and to avoid rendering any part of it superfluous or meaningless. *Iowa Dep't of Transportation v. Nebraska-Iowa Supply Co.*, 272 N.W.2d 6, 11 (Iowa 1978).

Applying these principles of statutory construction, we believe that a reasonable construction of sections 8.55(3) and 8.56(3), when read in their entirety, is that the reserve funds may be used for cash flow purposes. These sections state that the reserve funds "may be used in determining the cash position of the state for the payment of state obligations." The phrase "for the payment of state obligations" implies that the funds can be used for the precise purpose of paying, on a cash basis, the State's legal obligations for which appropriations were made by the Legislature. Any interpretation to the contrary would render the phrase "for the payment of state obligations" superfluous or meaningless, contrary to accepted rules of statutory construction.

It is our understanding that the Department of Management has interpreted sections 8.55(3) and 8.56(3) in this manner since those statutes were adopted. It is also our understanding that the Department of Management has routinely utilized the reserve funds for cash flow purposes since the 1980s. This long-standing practice is very significant in interpreting sections 8.55(3) and 8.56(3). The Legislature is presumed to know the construction of a statute given to it by the executive department of government. *John Hancock Mutual Life Insur. Co. v. Lookingbill*, 218 Iowa 373, 253 N.W. 604, 611 (1934). See *Lever Bros. v. Erbe*, 249 Iowa 454, 87 N.W.2d 469, 474 (1958) (There is a presumption that the Legislature was aware of federal regulations interpreting an act when it adopted a similar state statute). Where there has been a long-standing interpretation of a statute and the Legislature has left it materially unchanged, the presumption exists that the Legislature has acquiesced in the interpretation. *Smith v. Iowa Liquor Control Comm'n*, 169 N.W.2d 803, 807 (Iowa 1969). Indeed, the courts readily acknowledge that they will "give weight to the administrative interpretation of statutes, particularly when they are long-standing." *General Electric Co. v. State Bd. of Tax Review*, 492 N.W.2d 417, 420 (Iowa 1992).

In 1992, eight years after the economic emergency fund had been established, the Legislature created the cash reserve fund. 1992 Iowa Acts, 74th G.A., ch. 1227, § 6. At the same time, the Legislature amended portions of section 8.55(3) relating to the use of money in the economic emergency fund. 1992 Iowa Acts, 74th G.A., ch. 1227, § 5. Notably, in amending the statute governing the economic emergency fund, the Legislature did not in any way restrict the use of the fund for cash flow purposes, even though the funds had been used for cash flow purposes prior to the amendments. This is further evidence of legislative acquiescence in the Department of Management's interpretation of the statutes.

As noted above, when the cash reserve fund was created in 1992, it included the same exception to the restrictions on the use of funds as the economic emergency fund and allowed the fund "to be used in determining the cash position of the general fund of the state for the payment of state obligations." However, one additional restriction on the use of the funds for cash flow

purposes was included: the requirement that "any moneys so allocated [be] returned to the cash reserve fund by the end of each fiscal year." Iowa Code § 8.56(1).

In contrast, there is no requirement that moneys from the economic emergency fund which are used for cash flow purposes must be returned by the end of the fiscal year: the statute is silent on when these funds must be returned. This is significant because the statute governing the economic emergency fund was amended in the same year that the cash reserve fund was created. See 1992 Iowa Acts, 74th G.A., ch. 1227, §§ 5, 6. When the Legislature wanted to require that money used for cash flow purposes be returned to the fund by the end of the fiscal year, it certainly knew how to say so. The omission of such a requirement from section 8.55(3) is an indication that the legislature did not intend to impose such a requirement on the use of moneys from the economic emergency fund. See *State v. Carpenter*, 616 N.W.2d 540, 543 (Iowa 2000) ("We acknowledge the rule of statutory construction that legislative intent can be 'expressed by omission as well as by inclusion'.")

We conclude that sections 8.55(3) and 8.56(3) authorize the Department of Management to use moneys from the economic emergency fund and the cash reserve fund for cash flow purposes, specifically, to pay the State's legal obligations for which appropriations have been made by the Legislature. Monies used from the cash reserve fund for this purpose must be returned to the cash reserve fund by the end of the fiscal year. The statute is silent as to when monies used from the economic emergency fund must be returned.

II.

Your second question is whether the statutes in question explain how the State should account for the use of the reserve funds for cash flow purposes when the general fund is found to have insufficient resources to pay all legally allotted and appropriated items.

We are unable to answer this question in an Attorney General's opinion. As we have noted on a prior occasion:

This office can only render an opinion on issues of law, meaning those issues which can be answered by statutory construction or legal research. 1972 Op. Att'y Gen. 686. If resolution of a question is dependent on factors other than legal issues, it must be resolved by other entities as provided by law. . . . This office cannot resolve accounting issues as a matter of law.

1992 Iowa Op. Att'y Gen. 60. (Emphasis added).

We believe that your question as to the proper method of accounting in this situation should be resolved by your accountants, applying the principles of law we have set forth above.

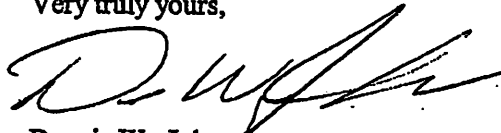
Ms. Cynthia Eisenhower
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CONCLUSION

A reasonable construction of sections 8.55(3) and 8.56(3) is that moneys from the economic emergency fund and the cash reserve fund may be used for cash flow purposes, specifically, to pay legal obligations of the State incurred as a result of legislative appropriations. The long-standing interpretation of these statutes by the Department of Management, as well as that Department's routine practice under these statutes, support this conclusion. The Legislature has acquiesced in this practice and has not amended the statutes to prevent it. Although moneys used from the cash reserve fund for cash flow purposes must be repaid at the end of the fiscal year, the statutes contain no such requirement for funds used from the economic emergency fund.

We are unable to advise you, as a matter of law, as to the proper method of accounting for these practices.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'D. W. Johnson', written in a cursive style.

Dennis W. Johnson
Solicitor General