

ATTORNEY GENERAL

DEPARTMENT

*Office Memorandum*

TO : WAYNE S. BURGGRAAFF  
Commissioner of Finance

DATE: 4/15/81

FROM : MIKE MILES *Mike Miles*  
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SUBJECT: Constitutional and Statutory Considerations  
Regarding a State Deficiency

You have advised me that, pursuant to the generally accepted accounting practices (GAAP) with which the State of Minnesota must comply in accordance with Minn. Stat. § 16.055 (1980), the state presently faces the prospect of a deficiency at the end of the 1980-81 fiscal biennium. You have also advised that this deficiency is defined, via GAAP, as a disparity between expenditures made and to be made pursuant to 1980-81 appropriations and the monies available and attributable to the 1980-81 biennium.

Based upon these facts, you have requested a memorandum in response to the following questions:

1. Do the provisions of Minnesota Statutes prohibit the occurrence of a deficiency at the end of a fiscal biennium?
2. Have the provisions of Minn. Stat. § 16A.15, subd. 1 been satisfied as a result of: (a) the Commissioner of Finance's previous unallotment of funds for state agency budgets and aids to local government bodies, (b) further state budget reductions occasioned by the Governor's issuance of Executive Order 81-2 and (c) the fact that further unallotments could result in the curtailment of basic state governmental services?
3. Have the provisions of Minn. Stat. § 16A.15, subd. 1 been satisfied if the Commissioner of Finance proposed allotment reductions sufficient to avoid a deficiency, but the Governor elects not to approve the Commissioner's proposal?
4. Does the Minnesota Constitution prohibit the occurrence of a deficiency at the end of fiscal biennium?
5. Does the Minnesota Constitution, absent specific legislative authorization, prohibit the expenditure of revenues to be received by the State of Minnesota during one fiscal biennium pursuant to appropriations made for the preceding biennium?

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6. If you respond to questions 1, 4 or 5 affirmatively and respond negatively to question 2, what actions must be taken in order to authorize the occurrence of a deficiency in the future and expend funds from a future biennium therefor?

#### SUMMARY CONCLUSION

It is our judgment that Minnesota law prohibits the occurrence of a fiscal deficiency and the use of revenue from one fiscal biennium to fund appropriations from a preceding biennium. Specific authorization by the Minnesota Legislature would be necessary before the deficiency and use of funds would be legal.

#### ANALYSIS

In answer to your first question, Minnesota Statutes prohibit a biennial deficiency and establish several mechanisms to prevent the occurrence of a deficiency. Both Minn. Stat. § 16A.15, subd. 1 (1980) and Minn. Stat. § 16A.15, subd. 3 (1980) address potential deficiencies and will be treated separately in this memorandum.

Minn. Stat. § 16A.15, subd. 1 provides:

In case the commissioner of finance shall discover at any time that the probable receipts from taxes or other sources for any appropriation, fund, or item will be less than was anticipated, and that consequently the amount available for the remainder of the term of the appropriation or for any allotment period will be less than the amount estimated or allotted therefor, he shall, with the approval of the governor, and after notice to the agency concerned, reduce the amount allotted or to be allotted so as to prevent a deficit. In like manner he shall request reduction of the amount allotted or to be allotted to any agency by the amount of any saving which can be effected upon previous spending plans through a reduction in prices or other cause.

This subdivision appears to be both direct in meaning and broadbased in application. It mandates that, if the Commissioner of Finance discovers that state receipts (revenues) are less than the estimates utilized in establishing appropriations and allotments, he shall correspondingly reduce agency allotments as necessary to avoid a deficiency upon receipt of the Governor's approval to do so. As such, its principal purpose is to avoid the occurrence of a deficiency.

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The term "mandates" is used advisedly in this memorandum, since this subdivision appears to be mandatory as opposed to directory in nature. Statutory requirements are generally viewed as directory if the requirement in question is incidental or subsidiary to the main purpose of the law and if the failure to comply with them will not result in substantive injury to individuals.<sup>1/</sup> In contrast, if, as is the case in subdivision 1, a statute defines and prescribes a duty based on the finding of certain facts and failure to act will result in injury, the provision is mandatory.

Similarly, although somewhat more obliquely, Minn. Stat. § 16A.15, subd. 3 (1980) attempts to prohibit deficiencies. Subdivision 3 states in relevant part:

No obligation shall be incurred against any fund, allotment, or appropriation unless the commissioner of finance shall first certify that there is a sufficient unencumbered balance in such fund, allotment, or appropriation to meet the same.

This subdivision, in effect, requires the Commissioner of Finance to determine that sufficient monies are available to pay for a proposed expenditure before the state commits itself to making the expenditure.<sup>2/</sup>

It is somewhat unclear as to the intended relationship between "balance in such fund," a cash term, and "balance in such . . . allotment or appropriation," an authority term as generally defined in Minn. Stat. § 16A.57 (1980). However, it may be fairly presumed that the above-quoted portion of subdivision 3 generally parallels the intent of Minn. Stat. § 16A.15, subd. 1 discussed *supra*, since both speak to the requirement of keeping expenditures within the bounds of the funds available to the state and would operate in a manner so as to preclude a deficiency.

Your second inquiry, relative to actions previously taken by the Governor and Commissioner of Finance and the consequences of further unallotments, raises several issues. It may be argued that, since both the Governor and Commissioner have made significant reductions in state expenditures, the intent of Minn. Stat. § 16A.15, subd. 1 has been fulfilled. Collaterally, it may be

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<sup>1/</sup> See, *State of Minnesota v. Frisby*, 260 Minn. 70, 108 N.W.2d 769 (1961).

<sup>2/</sup> See, *Tri-State Telephone and Telegraph Co. v. Intercounty Telephone Co.*, 211 Minn. 496, 1 N.W.2d 853.

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contended that further unallotments will have such a harsh effect on state government and the provision of services to Minnesota's citizens that the legislature could not have intended subdivision 1 to have been applied to such an end.<sup>3/</sup>

While these arguments have merit, the better view is that they do not satisfy the requirements of subdivision 1 for the following reasons:

First, Minn. Stat. § 16A.15, subdivision 1 seems clear and straightforward in terms of both the problem to be avoided and the Commissioner's duties with respect thereto. In such circumstances, the legislature has provided in Minn. Stat. § 645.16 (1980):

When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

When the words of a law are not explicit, the intention of the legislature may be ascertained

. . .

Secondly, in the absence of further guidance by the legislature, it is difficult to determine whether the greater problem emanates from the impact of a deficiency or the results of the curtailment of governmental services. Had the legislature intended subdivision 1 to have been satisfied if the prospect of adverse results renders further allotments reduction potentially detrimental or by virtue of partial application of its provisions, it would have so provided. Since it has not, the clear provisions of subdivision 1 should be applied.

In examining your third inquiry, it is a close question as to whether the provisions of Minn. Stat. § 16A.15, subd. 1 are satisfied if the Commissioner of Finance proposes adequate unallotments to avoid a deficiency and Governor does not approve them.

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<sup>3/</sup> Both of these arguments are rooted in Minn. Stat. § 645.17 (1980) which suggests that the courts, in their ascertainment of legislative intent, presume: "The legislature does not intend a result that is absurd, impossible of execution or unreasonable. . ."

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If one looks to the spirit and intent of subdivision 1, it may be argued that the overriding purpose of the provision is to avoid the occurrence of a deficiency. Therefore, all officials acting pursuant to subdivision 1 must strive to achieve this goal.

Alternatively, as was noted in the response to the preceding question, it appears that subdivision 1 is clear on its face and that the straight-forward meaning of its provisions, as opposed to possible legislative intent, be given effect.<sup>4/</sup> Applying this standard, it is evident that the Commissioner of Finance is continuously required to attempt to reduce allotments. It is equally clear that the Commissioner must obtain the Governor's approval before he may effect the unallotments.

In turn, notwithstanding the Commissioner's recommendation, the statute seems to recognize the possibility that the Governor might disapprove the proposed unallotments. In this event and presuming the Governor has acted reasonably in disapproving the Commissioner's proposals, neither the Commissioner nor the Governor will have failed to fulfill the duties explicitly set forth in subdivision 1.

On balance, the latter argument appears to be more tenable. However, it should be noted that it is probable that the Commissioner's responsibilities under subdivision 1 would not be satisfied if he chose to submit a single option to the Governor and that option was rejected. The better view is that the Commissioner of Finance is obligated, through submission of a multi-dimensional unallotment proposal or a series of proposals, to exhaust the alternative means of unallotment by which a deficiency may be avoided.

The answer to question 1 probably renders unnecessary a response to your inquiry regarding the constitutional prohibition of a deficiency. However, it appears clear that there is no constitutional prohibition regarding the existence of a deficiency at the end of a fiscal biennium. In fact, the Minnesota Constitution does not utilize the term "deficiency" and makes no provision for the occurrence of this type of event. Minn. Const., Art. XI is the only segment of the constitution specifically addressing appropriations and finances and the provisions contained therein do not treat biennial deficiencies.<sup>5/</sup>

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<sup>4/</sup> Minn. Stat. § 645.16 (1980) discussed supra.

<sup>5/</sup> If the state proposed to deal with its deficiency by proceeding to acquire goods and services and then withhold payment therefor for an extensive period of time (thus causing creditors to "finance" the state deficiency), it is conceivable that the provisions of Minn. Const., Art. XI, §§ 6 and 7 might

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Your inquiry as to whether the Minnesota Constitution, absent specific legislative authorization, prohibits the expenditure of revenues received in one biennium pursuant to appropriations made for the preceding biennium poses a complex question.

The pertinent constitutional provision relative to this inquiry is found in Minn. Const., Art. XI, § 1, which provides: "No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." This provision may arguably be applied to your deficiency question in two quite different ways.

One view would suggest that, since proposed obligations yet to be incurred in fiscal year 1981 were, in fact, authorized by various appropriations effective in 1980 and 1981, the constitutional mandate of appropriation before expenditure has been met. Correspondingly, since Minn. Const., Art XI, § 1 does not specify what monies may be utilized, in terms of the timing of state receipt, it is permissible to use revenues to be realized in fiscal year 1982 in order to assuage any 1981 deficiency.

The other manner in which to view Minn. Const., Art. XI, §1 results in a completely different outcome. This approach starts with the premise that an appropriation and the money available therefor are inexorably intertwined. In other words, when making constitutionally proper appropriations, the legislature has determined both the extent of the spending authority it intends to grant and the specific revenues from which expenditures are to be made.

Pursuant to this approach, we must presume that, in making the 1980-81 appropriations, the legislature anticipated that the state fund balances available at the commencement of the 1980-81 biennium and revenues to be received during that biennium would be sufficient to meet cash disbursements occasioned by the appropriations the legislature authorized. We must also assume that the legislature did not intend to authorize or anticipate the expenditure of revenues to be realized in a separate fiscal period (i.e. fiscal years 1982, 1984, etc.) for the funding of 1980-81 appropriations.

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(Footnote Continued)

be germane. Sections 6 and 7 set forth the two mechanisms (issuance of certificates of indebtedness and bonds) through which the state may incur public debt and it could be argued that, by borrowing from creditors, the state has created a new and constitutionally unauthorized means to incur debt.

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Accordingly, this analysis compels the conclusion that Minn. Const., Art XI, § 1 would prohibit the use of revenues realized by the state in fiscal years 1982-83 to fund 1980-81 appropriations without specific legislative authorization.

Unfortunately, there is no relevant case law on this issue and it appears that this is the first occasion on which the Attorney General has been asked to address this matter. However, the latter of the above views appears to be the better supported approach for the following reasons:

1. It appears axiomatic that appropriations and available funds must be considered together because, if this is not done, the state could quickly incur obligations far in excess of its ability to pay.

2. It may be argued that the legislature has attempted to construe this relationship and thereby clarify applicable constitutional limitations by enactment of Minn. Stat. § 16A.11, subdivision 2 which states in relevant part:

Part 1 of the budget shall consist of a budget message prepared by the governor, including his recommendations with reference to the fiscal policy of the state government for the coming biennium, describing the important features of the budget plan, embracing a general budget summary setting forth the aggregate figures of the budget so as to show the balanced relation between the total proposed expenditures and the total anticipated income, with the basis and factors on which the estimates are made, the amount to be borrowed, and other means of financing the budget for the ensuing biennium, compared with the corresponding figures for at least the last two completed fiscal years and the current year.

Emphasis added.

3. The legislature may be argued to have further attempted to interpret constitutional standards by underscoring the significant relationship between available monies and appropriations under which they may be spent in Minn. Stat. § 16A.15, subds. 1 and 3 which respectively require the Commissioner of Finance to: reduce allotments if "the probable receipts from taxes or other sources for any appropriation fund, or item will be less than was anticipated . . ." and "certify that there is sufficient unencumbered balance" to meet an obligation before it is incurred.

In any event, it would appear that the above-referenced statutory provisions (particularly Minn. Stat. § 16A.15, subd. 3) interrelate appropriations and available funds to the extent that they may be viewed as prohibiting the use of revenues from one biennium pursuant to appropriations from the preceding biennium unless the legislature expressly provides otherwise.

In light of the advice rendered in this memorandum, your final question regarding the steps you may take to legalize the occurrence of a deficiency and make funds available from the succeeding biennium to eliminate that deficiency is pertinent.

Essentially, it appears that Minn. Stat. § 16A.15, subdivisions 1 and 3 prohibit the occurrence of a deficiency. Additionally, absent specific legislative authorization, both Minn. Const., Art. XI, § 1 and Minn. Stat. § 16A.15, subdivisions 1 and 3 apparently prohibit the utilization of a future biennium's revenues for elimination of that deficiency.

I would suggest that there are several ways in which to attempt to resolve these legal infirmities for the future. The principal mechanisms are as follows:

First, you may present all unallotment options to the Governor. If he disapproves these options, you could conclude that the provisions of Minn. Stat. § 16A.15, subdivision 1 have been satisfied. In conjunction with this action, you must seek a legislative appropriation which will authorize you to utilize revenues to be received in fiscal year 1982 for appropriations and allotments authorized in fiscal years 1980-81.

If you are successful in obtaining this appropriation, you will have removed the constitutional and statutory concerns regarding the expenditures of future revenues for present appropriations. You may also have removed the oblique deficiency prohibition in Minn. Stat. § 16A.15, subdivision 3, since, in light of the new appropriation, you may be able to "certify that there is a sufficient unencumbered balance in such fund" (or available to the fund as needed) to meet cash disbursement requirements.

If you have reservations regarding the effect of the Governor's disapproval of unallotment proposals, a second option you may consider is as follows: you may seek and obtain enactment of legislation which would (a) toll or otherwise supercede the deficiency provisions of Minn. Stat. § 16A.15, subdivision 1 and 3 and (b) authorize a deficiency to exist at the end of the biennium. Additionally, you must seek and obtain the enactment of the appropriation described in the preceding option.



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In conclusion, the advice rendered in this memorandum may be summarized as follows:

1. Minnesota Statutes § 16A.15, subdivisions 1 and 3 prohibit a deficiency and provide mechanisms to avoid a deficiency.

2. The provisions of Minn. Stat. § 16A.15, subdivision 1 have not been satisfied as a result of previous reductions in allotment by the Commissioner of Finance, the Governor's issuance of Executive Order 81-2 or the possibility that further reductions in allotment will curtail basic state governmental services.

3. It may be narrowly concluded that the provisions of Minn. Stat. § 16A.15, subd. 1 are satisfied if the Commissioner of Finance has proposed comprehensive allotment reduction options to the Governor and the Governor reasonably disapproves the options. This conclusion does not eliminate the deficiency prohibition set forth in Minn. Stat. § 16A.15, subd. 3.

4. The Minnesota Constitution does not prohibit the occurrence of a deficiency.

5. Absent a specific authorizing appropriation, it is probable that Minn. Const., Art. XI, § 1 and Minn. Stat. § 16A.15 prohibit the expenditure of revenues to be received in one fiscal biennium for the purpose of eliminating a deficiency in the preceding biennium.

6. The occurrence of a deficiency in the future and the expenditure of revenues from a future biennium to eliminate the deficiency may be legalized through the adoption of authorizing and curative legislation.