



April 5, 2017

The Honorable Mike Hunter
Attorney General
Oklahoma Office of Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

Dear Attorney General Hunter:

In my capacity as the Secretary of Finance and the Director of the Office of State Finance, I am seeking your legal opinion.

The Oklahoma Tax Commission does not collect revenue in equal monthly amounts, and yet the Director of the Office of State Finance is obligated to distribute a fixed amount of appropriated dollars to agencies each month. [Oklahoma Constitution, Article X, Section 23 (9) and (10) & 62 O.S. § 34.54] The difference in these amounts is what causes funds to be borrowed.

I relied on Title 62 O.S. § 34.55(A) to fund the Cash Flow Reserve Fund. The law enables the Director of the Office of Management and Enterprise Services to transfer monies from any treasury fund to the General Revenue Cash-flow Reserve Fund as required to satisfy monthly allocations scheduled from the General Revenue Fund for the then current fiscal year as long as any monies transferred are repaid before any transfers are made from the General Revenue Fund to the General Revenue Cash-flow Reserve Fund for the subsequent fiscal year.

The question is, if money is borrowed pursuant to Title 62 O.S. § 34.55(A) from the Constitutional Reserve Fund (aka the "Rainy Day" Fund) to supplement the General Revenue Cash-flow Reserve Fund as required to satisfy monthly allocations, is Article X, Section 23 of the Oklahoma Constitution violated?

I am anxious to have your official opinion to aid this office in its decision-making for the remainder of this administration and as may be necessary in years beyond.

Respectfully,

A handwritten signature in black ink, appearing to read "Preston L. Doerflinger", is written over the word "Respectfully,".

Preston L. Doerflinger
Director, Office of Management and Enterprise Services
Secretary of Finance, Administration and Information Technology

Enclosure

MEMORANDUM

TO: Preston Doerflinger

FROM: Tim Tuck
Deputy General Counsel

DATE: March 29, 2017

RE: The State Constitutional Reserve Fund, aka "Rainy Day Fund".

Issue:

1. Does the Director of OMES have the authority to borrow funds from the Constitutional Reserve Fund (aka the "Rainy Day" Fund) in order to satisfy financial obligations of the State of Oklahoma?

Answer: Yes, Title 62 O.S. §34.55(A) gives that direct authority to the Director of OMES.

Authority: The above cited statute states:

"The Director of the Office of Management and Enterprise Services may transfer monies from any treasury fund (emphasis added) to the General Revenue Cash-flow Reserve Fund as required to satisfy monthly allocations scheduled from the General Revenue Fund for the then current fiscal year. Funds from which any monies are so transferred shall be repaid before any transfers are made from the General Revenue Fund to the General Revenue Cash-flow Reserve Fund for the subsequent fiscal year".

Analysis: It is relevant to note the Oklahoma Constitution, Article X, Section 23 (7), lists specific circumstances under which the monies in the Constitutional Reserve Fund may be "appropriated". However, the transfer of funds as contemplated by Title 62 O.S. §34.55 is not an "appropriation". Rather, it is a transfer or "borrowing" of funds which are to be paid back as clearly indicated by the statute. As such, the type of transfer contemplated by the above cited statute is not in conflict with the Oklahoma Constitution and is allowable by law.

Conclusion: For the reasons cited above, it is my legal opinion the Director of the Office of Management and Enterprise Services is within his authority to transfer monies from the Constitutional Reserve Fund in order to satisfy the financial obligations of the State of Oklahoma.

Submitted by: Tim Tuck, Deputy General Counsel, Office of Management and Enterprise Services