

**DEPARTMENT OF TRANSPORTATION**

**SPECIAL REVIEW: AIRPLANE PURCHASE**

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**APRIL 1994**

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Financial Audit Division  
Office of the Legislative Auditor  
State of Minnesota

**94-13**



# SUMMARY

State of Minnesota

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## DEPARTMENT OF TRANSPORTATION

### SPECIAL REVIEW: AIRPLANE PURCHASE

Public Release Date: April 15, 1994

No. 94-13

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#### OBJECTIVES:

The Office of the Legislative Auditor has conducted a special review of an airplane purchase by the Minnesota Department of Transportation (Mn/DOT). We conducted the review at the request of three members of the Minnesota House of Representatives.

Our objective was to answer the following questions:

- Did the Department of Transportation have authority to spend more for the airplane than was appropriated by *Laws of Minnesota* First Special Session, Chapter 4, Section 3? By spending more to purchase the airplane than was appropriated during the special session, did the department violate *Minn. Stat.* Section 10.17 or Section 10.31?
- Did the Department of Transportation have authority to trade in a state airplane and receive credit toward the purchase of another airplane?
- Did the Department of Transportation's procurement process comply with the law and was it adequate to ensure that the state made an economical purchase?

#### CONCLUSIONS:

We concluded that the department did have authority to spend more to purchase the airplane than was appropriated during the special session. We also concluded that the department did not violate statutory provisions that restrict agency spending and indebtedness (*Minn. Stat.* Section 10.17 and Section 10.31) because the department transferred money from its equipment account to cover the additional cost of the airplane.

We concluded that the department had implied authority to trade in a used state airplane and receive credit toward the purchase of another airplane. But, we recommend that the department obtain explicit statutory authority if it wants to continue the practice of trading in used equipment.

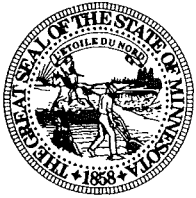
We found that the department did not comply with one statutory requirement. It did not offer to sell the used "surplus" airplane to other state agencies and political subdivisions before the airplane was offered for sale (or, in this case, for trade) by competitive bids. Otherwise, we concluded that the department's procurement process complied with the law, and we concluded that the department's procurement process was reasonable and business-like.

Contact the Financial Audit Division for additional information.

296-1730

FINANCIAL AUDIT DIVISION





STATE OF MINNESOTA

**OFFICE OF THE LEGISLATIVE AUDITOR**

CENTENNIAL BUILDING, ST. PAUL, MN 55155 • 612/296-4708

JAMES R. NOBLES, LEGISLATIVE AUDITOR

Senator Phil Riveness, Chair  
Legislative Audit Commission

Members of the Legislative Audit Commission

Mr. James Denn, Commissioner  
Minnesota Department of Transportation

The Office of the Legislative Auditor has conducted a special review of an airplane purchase by the Minnesota Department of Transportation. We conducted the review in response to a request from three members of the Minnesota House of Representatives. This is our report.

We received full cooperation from the Department of Transportation. We also received legal advice from Peter S. Wattson, Office of Counsel and Research, Minnesota Senate; Mark Shepard, Research Department, Minnesota House of Representatives; and Kenneth E. Raschke, Jr., Office of the Minnesota Attorney General.

A handwritten signature of James R. Nobles in dark ink, written over a horizontal line.

James R. Nobles  
Legislative Auditor

A handwritten signature of John Asmussen in dark ink, written over a horizontal line.

John Asmussen  
Deputy Legislative Auditor

Report signed on: April 1, 1994



## **Department of Transportation: Airplane Purchase**

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### **Audit Participation**

The following members of the Office of the Legislative Auditor prepared this report:

James Nobles	Legislative Auditor
John Asmussen, CPA	Deputy Legislative Auditor
Margaret Jenniges, CPA	Audit Manager
Mark Baloga	Attorney

### **Exit Conference**

A draft report was discussed with the following individuals from the Department of Transportation at a meeting held on March 22, 1994:

Edwin H. Cohoon	Deputy Commissioner
Robert McFarlin	Director, Public Affairs
Raymond J. Rought	Director, Aeronautics
Richard Swanson	Director, Financial Management





# Department of Transportation: Airplane Purchase

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## Introduction

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This report addresses questions about the purchase of an airplane by the Minnesota Department of Transportation (Mn/DOT). The purchase was authorized by a law enacted during the 1993 Special Session of the Legislature. The authorization reads as follows:

\$2,700,000 is appropriated to the commissioner of transportation to replace a state airplane. \$1,620,000 is from the trunk highway fund and \$1,080,000 is from the state airports fund. The appropriation is available until June 30, 1995. [*Laws of Minnesota*, 1993 First Special Session, Chapter 4, Section 3]

We were asked by three members of the Minnesota House of Representatives to review the airplane purchase. In a letter dated November 1, 1993 (see Appendix A), the legislators argued that the Department of Transportation made an "unauthorized expenditure" by spending more than the \$2,700,000 that was appropriated to purchase the airplane.

We accepted the request for a review, because the House members raised important questions that are within the purview of the Legislative Auditor. Minn. Stat. Section 3.972, Subd. 2, directs the Legislative Auditor to "...ascertain that all financial transactions and operations involving the public funds and property of the state comply with the spirit and purpose of the law...."

We also accepted the request for a review because it presented us with an opportunity to address the topic of executive branch implementation of appropriation laws, an important topic that we think needs more attention. It needs more attention because, in our view, there is confusion and even conflict over how much flexibility state agencies have to "move money around."

Therefore, in addition to answering specific questions about the Department of Transportation's purchase of an airplane, we tried to make our review and this report useful to a more general discussion about the implementation of appropriation laws. In fact, we hope that this report will stimulate such a discussion, and that it will lead to greater clarity and less conflict between the legislative and executive branches over the implementation of appropriation laws.

## Background

On May 25, 1993, the Governor and legislative leaders reached agreement on what legislation would be passed by the Legislature and signed by the Governor during a special session. The major focus of the agreement and of the special session was enactment of appropriations for higher education and health and human service programs. But, among the other items the Governor and legislative leaders agreed to was "...enactment of a bill or amendment which authorizes an appropriation of \$2.7 million to the commissioner of transportation to replace a state aircraft." The resulting authorization was in a law that deals mostly with the state's budget contingency plan [see Appendix B for the full text of *Laws of Minnesota*, Chapter 4].

## Department of Transportation: Airplane Purchase

Replacement of one of the state's airplanes had not been part of the proposed budget submitted by the Governor to the 1993-94 Legislature. A proposal was brought forth, however, by a member of the Senate Finance Committee during discussions on the state bonding bill, and authorization for the purchase of an airplane was part of the bonding bill passed by the Senate on April 30, 1993. The House of Representatives did not have a similar provision in its bonding bill, and in conference committee the airplane provision was dropped. It was dropped in part because the Department of Finance had received a letter dated May 10, 1993, from the state's bond counsel, Dorsey and Whitney, indicating that "...doubt exists as to whether the state Legislature can authorize the issuance of state general obligation bonds for this purpose [the purchase of an airplane]." While the Senate Finance Committee considered other funding options after receiving the bond counsel's advice, authorization for the purchase of an airplane was not part of any legislation passed during the 1993 regular legislative session.

A proposal to purchase an airplane was brought forth again in negotiations between the Governor and legislative leaders for a 1993 special session. And, as noted earlier, authorization to purchase an airplane was part of the package approved for the special session and it was ultimately approved during that special session and signed by the Governor.

After the Department of Transportation received authorization to purchase an airplane, the department sent bid requests and specifications to ten vendors and published the bid request and specifications in the *State Register*. The bid specifications said the state wanted to purchase a 1992 or newer nine-passenger, two-engine aircraft. During earlier discussions, the department had considered purchasing an older model. But, by the time the bid specifications were drafted, the department had decided that a newer airplane would be a more cost-effective choice. As part of the bid specifications, the department proposed to trade in a 1973 King Air airplane that was purchased in 1977. The state also owns a 1981 C-90 Air airplane that was purchased in 1985.

The closing date for bids was July 13, 1993, and the department received two bids. Elliot Flying Service of Minnesota proposed to sell the state a 1993 Beechcraft with 123 hours of flying time at a base price of \$3,004,274, less a trade-in value of \$320,000 for the 1973 King Air airplane. The second bid was submitted by Clear Air/David Dotzenroth and it proposed to sell the state a 1990 Beechcraft 200 King Air with 498 hours of flying time for a base bid of \$2,410,000 less a trade-in value of \$325,000 for the 1973 King Air airplane.

The Department of Transportation accepted the bid from Elliot Flying Service of Minnesota, and on August 16, 1993, the department signed a purchase order to purchase the 1993 Beechcraft. The net price of the airplane was \$2,684,274.00. But the department had to also pay \$174,477.81 in sales tax (from which a state agency is *not* exempt), which brought the total amount of the transaction to \$2,858,751.81.

To supplement the \$2,700,000 appropriation it received for the airplane, the department transferred \$158,751.81 from an appropriation it received during the regular 1993 legislative session for equipment.

## Department of Transportation: Airplane Purchase

### Questions

We asked the following questions about this transaction:

- Did the Department of Transportation have authority to spend more for the airplane than was appropriated by *Laws of Minnesota* First Special Session, Chapter 4, Section 3? By spending more to purchase the airplane than was appropriated during the special session, did the department violate Minn. Stat. Section 10.17 or Section 10.31?
- Did the Department of Transportation have authority to trade in a state airplane and receive credit toward the purchase of another airplane?
- Did the Department of Transportation's procurement process comply with the law and was it adequate to ensure that the state made an economical purchase?

### Methodology

We examined documents and other materials related to the airplane appropriation and to the department's purchase of the airplane. We discussed the appropriation and the purchase with several legislators and legislative staff who were directly involved with the development and passage of the authorizing legislation, and we discussed the appropriation and the airplane purchase with officials at the Department of Transportation who were also directly involved.

Because the questions we addressed are complex and significant to the relationship between the legislative and executive branches, we sought legal analysis from three sources: the Attorney General's office; the Research Department for the Minnesota House of Representatives, and Office of Senate Counsel and Research for the Minnesota Senate. The three memoranda we received are in Appendix C. We want to caution that these memoranda do not represent official legal opinions; they represent the analysis and opinions of their authors.

In addition to these three written analyses, we also informally received opinions and advice from many other people, including the legislators who made the request for the review and others involved in the daily administration of the state's financial operations. We emphasize, however, that the judgments in this report are solely our own and may be different from those who gave us advice and opinions.

## **Department of Transportation: Airplane Purchase**

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## Department of Transportation: Airplane Purchase

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### Conclusions

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**Did the Department of Transportation have authority to spend more for an airplane than was appropriated by *Laws of Minnesota*, 1993 First Special Session, Chapter 4, Section 3? By spending more to purchase the airplane than was appropriated during the special session, did the department violate Minn. Stat. Section 10.17 or Section 10.31?**

As a result of our review, we have concluded that the Department of Transportation acted within its legal authority when it spent more to purchase an airplane than was appropriated during the 1993 special session. There is, however, no single law that directly answers the question. To arrive at a conclusion, several laws and interpretations and some legislative history must be considered. As we said earlier, we did this review, at least in part, because we think the topic is complex and we understand how some people--particularly the legislators who made the request for the review--could come to a different conclusion.

However, we begin with the obvious: the appropriation law at issue (*Laws of Minnesota*, 1993 First Special Session, Chapter 4, Section 3) neither explicitly gave nor denied the department authority to spend more than was appropriated for the airplane. If it had said one thing or the other, there probably would not be a dispute. There is a dispute because, absent a prohibition, the department concluded that it could spend more.

It is also clear that the "extra" money the department spent had to come from another appropriation. According to the Minnesota Constitution: "No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law" [Article XI, Section 1].

Therefore, we think an answer to whether the department had authority to spend more than was expressly appropriated for the airplane during the special session requires an understanding of how much authority the department has to transfer money among the various appropriations it receives. As noted earlier, to pay for the airplane, the department supplemented the appropriation it received during the special session with money it received for equipment during the regular session.

The most recent and the clearest statement from the Legislature on what authority agencies have to transfer money came in 1993 when the Legislature enacted the first comprehensive transfer authority for state agencies. Codified as Minn. Stat. Chapter 16A.285, the new laws reads as follows:

An agency may transfer state operational money between programs within the same fund if: (1) the agency first notifies the commissioner [of finance] as to the type and intent of the transfer; and (2) the transfer is consistent with legislative intent. If an amount is specified for an item within an activity, that amount must not be transferred or used for any other purpose. The commissioner shall report the transfers to the chairs of the senate finance and house of representative ways and means committees.

## Department of Transportation: Airplane Purchase

As Senate Counsel Peter Wattson says in his analysis, the 1993 law is a recognition of past practice and a codification in statute of ad hoc authorizations that have for many years allowed agencies to transfer money within their budgets. Mr. Wattson also makes the following observation about the 1993 law: "This broad transfer authority means, essentially, that an agency may use any money appropriated to it for any purpose for which it has received an appropriation, which usually covers everything the agency is authorized by statute to do."

The law does, of course, have limitations. It does not authorize transfers between funds or between agencies. In addition, it contains this explicit limitation: "*If an amount is specified for an item within an activity, that amount must not be transferred or used for any other purpose.*" This language would prohibit Mn/DOT from using the money appropriated for the airplane to purchase anything other than an airplane. But, again, the law allows an agency to transfer money appropriated for a general purpose (e.g. equipment) to a more specific purpose (e.g. purchase of an airplane) as long as the specific purpose has been authorized by the Legislature.

Senate Counsel Peter Wattson and Mark Shepard, Legal Counsel at House Research, both emphasize that agencies always need to conform their actions--including transfers of money--to "legislative intent." Determining legislative intent is, however, often difficult when the Legislature has not clearly stated its intention in law. Direction given outside the language of the law--by individual legislators or even by legislative committees, for example--is often not well documented and, more importantly, may not represent the majority view of the Legislature. Indeed, it is not uncommon for an agency to receive conflicting advice or direction from legislators. More importantly, as Assistant Attorney General Raschke points out in his memorandum, in Minnesota, as well in other states, the courts have expressly limited the legal significance of "legislative working papers." He quotes a Florida case used by the Minnesota Supreme Court to this effect: "The Legislature cannot give the force of law to something which it refuses to enact into law. Although the Legislature's intent is evidenced by the statement of intent and the working papers, the provisions in those documents cannot be binding."

Nevertheless, because Minn. Stat. Section 16A.285 expressly requires transfers of money by an agency to be "consistent with legislative intent" and because there was no specific statement of legislative intent in the laws appropriating money for the airplane or for equipment, we examined the "informal history" of the airplane purchase appropriation. We looked to see if there was any understanding between the Legislature and executive officials on the question of whether or not more money than was appropriated during the special session would be spent to purchase an airplane. We found that the people directly involved had only vague recollections and nothing emerged in our review that could be called a clear, definitive understanding, one way or the other. It is also worth noting that we found no evidence that the department received any objection from the legislators and legislative staff who were informed that the special session appropriation for an airplane was going to be supplemented with money transferred from the equipment account.

In summary:

- The Legislature authorized the Department of Transportation to purchase an airplane and appropriated money for that purpose during the 1993 special session.

## Department of Transportation: Airplane Purchase

- The Legislature did not limit the department's authority to supplement the airplane appropriation with money from other appropriations.
- Like other state agencies, the Department of Transportation has broad--though not unlimited--statutory authority to transfer money among the many appropriations it receives.
- By transferring money from its equipment account and using it to supplement the appropriation it received to purchase an airplane during the special session, the Department of Transportation was not in conflict with any informal, unwritten "legislative intent" we were able to establish.

As stated earlier, we also asked specifically whether or not the Department of Transportation violated Minn. Stat. Section 10.17 or Section 10.31 which are designed to control executive spending. Those provisions read as follows:

**10.17 OFFICIALS NOT TO EXCEED APPROPRIATIONS.** When there has been an appropriation for any purpose it shall be unlawful for any state board or official to incur indebtedness on behalf of the board, official, or the state in excess of the appropriation made for such purpose. It is hereby made unlawful for a state board or official to incur any indebtedness in behalf of the board, the official, or the state of any nature until after an appropriation has been made by the Legislature. Any official violating these provisions shall be guilty of a misdemeanor and the governor is hereby authorized and empowered to remove any such official from office.

**10.31 MISAPPROPRIATION OF MONEY.** It is illegal for any official or head of any state department, or any employee thereof, to use moneys appropriated by law, or fees collected for any other purpose than the purpose for which the moneys have been appropriated, and any such act by any head of a department, or any state official, is cause for immediate removal of this official or head of a state department from the position held with the government of this state.

Based on the legal analysis we received and our own assessment, we have concluded that the department did not violate these legal prohibitions. We agree with Senate Counsel Peter Wattson's conclusion that Section 10.17 would have been violated if the department had purchased an airplane for more than the \$2.7 million appropriated during the special session without having transferred money from another appropriation to cover the additional cost. But, as previously discussed, the department did make those transfers.

Mr. Wattson said that section 10.31 would have been violated if the department had covered the extra cost of the airplane by transferring money from an appropriation that did not allow it to be used for an airplane purchase. He pointed to money appropriated for highway debt service as an example. He said:

## Department of Transportation: Airplane Purchase

...the use to which the highway debt service appropriation must be put is very clear (it ties directly to the amount of trunk highway bonds outstanding), and because there is specific language in the appropriation act that says "No transfer may be made from the appropriations for debt service to any other appropriation."  
[But],...Most other appropriations are not so narrowly constructed....

In presenting the facts related to the airplane purchase to Attorney General's Office, we specifically asked whether or not the Department of Transportation violated either section 10.17 or section 10.31. In his memorandum, Assistant Attorney General Rashchke said: "In our view, the facts as described in your letter would not likely be held to constitute a violation of the cited provisions."

### Discussion

Although we have come to a different conclusion than the legislators who asked for this review, we certainly understand their point of view. We know from personal observations that legislators often spend hours deliberating how much money should be appropriated for a specific item or activity in an agency's budget. Understandably, some legislators feel frustrated and offended when an agency essentially changes a legislative decision and spends more than was specified in a line item appropriation.

On the other hand, some legislators feel just as strongly that executive officials need considerable flexibility to manage an enterprise as complex as state government. They do not want the Legislature to "micro manage" state government and are comfortable giving agencies the authority to "move money around" to meet legislatively-authorized objectives.

Ultimately, of course, the Legislature has the power to decide how much control it wants to exercise over state government. By the way it writes laws, the Legislature can either expand or constrict executive discretion. As we said at the beginning, the law that authorized the purchase of an airplane could have prohibited the Department of Transportation from transferring money from other appropriations to supplement the airplane appropriation. By not making such a prohibition, the Legislature allowed the department to use other legal authority to transfer money from other appropriations.

One of the legislators who asked for this review told us that his position was, at least in part, based on the assumption that state agencies do not have flexibility to spend more when the Legislature makes an appropriation in a "free standing" law (by which he means a law that mentions a specific item or activity and stands apart from the agency's omnibus appropriation). While we understand the logic of this position, it is not currently a part of the law. As we mentioned earlier, the 1993 law that gives agencies broad transfer authority explicitly says that money appropriated for a specific purpose cannot be spent on some other purpose, but it does not say that an agency cannot supplement the appropriation for a specific purpose with other non-restricted funds and spend more. The Legislature could amend Minn. Stat. Section 16A.285 to include a prohibition against an agency spending more on an item or activity when a specified amount for that item or activity has been appropriated by the Legislature.



## Department of Transportation: Airplane Purchase

Whether the Legislature should be more or less restrictive in the authority it gives agencies to transfer money among appropriations is a policy choice for the Legislature to make. We recognize that there are good arguments on both sides, and we do not recommend one approach over the other. We do, however, strongly recommend that the Legislature express its position on spending and transfer authority formally in law, and rely as little as possible on informal legislative history to establish "legislative intent." As this review has demonstrated, provisions governing agency spending are scattered throughout statutes and session laws, which makes it difficult to determine what an agency can and cannot do. Moreover, we have already pointed out several practical and legal reasons why informal legislative history is not reliable as an expression of legislative intent.

### **Did the Department of Transportation have authority to trade in a state airplane and receive credit toward the purchase of another airplane?**

In their November 1, 1993, letter, the legislators who asked us to review the airplane purchase argued that the Department of Transportation did not have authority to use the value of the airplane that was traded in to reduce the net purchase price of the airplane that was bought. In fact, by counting the \$320,000 that was received in trade-in value, they say the department actually spent \$479,00 more than was appropriated for the purchase of an airplane. They also contend that the money obtained from the trade-in should have been credited to the General Fund.

It is true that the 1993 special session law authorizing the airplane purchase did not explicitly authorize the use of a trade-in to reduce the purchase price, but the department has general authority under Minn. Stat. Section 161.41 to dispose of "surplus property." Also, the appropriation language said the money was to be used to "replace" a state airplane. Moreover, there is considerable evidence that legislators knew the department planned to trade in one of the state's airplanes as part of the "replacement" transaction. Finally, the department could not have put the proceeds from a trade in the General Fund. Minn. Stat. Section 161.41 requires that proceeds from the disposition of surplus property must be credited to the Trunk Highway Fund.

We note, however, that Minn. Stat., Section 161.421 does not explicitly mention "trade-in" as an option. The law says: "The commissioner [of transportation] may also sell the surplus property under the competitive bidding provisions of chapter 16B if no state agency or political subdivision of this state offers to purchase the surplus property for its determined value." [see Subd. 2] The department argues that the trade-in option is covered under the authorization to "sell" surplus property. We think that is a reasonable interpretation, and, apparently, so does the Assistant Attorney General Kenneth Raschke. On this point, Mr. Raschke said:

The specific statutory authority for the direct transfer of the old plane to the vendor in exchange for reduction in the money cost for purchase of the new plane, is somewhat elusive . . . . We have not located express statutory authority for the exchange of state [property] or the transfer of state property as a "trade-in" on property to be acquired. Such authority might reasonably be implied, however, from the authority of the Commissioner . . . to "purchase, rent or otherwise provide for furnishing . . . equipment" . . . coupled with the authority to sell surplus property, direct the proceeds to the appropriate agency for purchase of similar needed equipment.

## **Department of Transportation: Airplane Purchase**

Nevertheless, we recommend that:

- If the department wants to continue the practice of trading in equipment as part of a purchase, it should obtain explicit legal authority.

We think the department should have explicit authority for the trade-in option because that approach eliminates separate competitive bidding on the used equipment being disposed of by people not in a position to offer new equipment for sale to the department. Department officials point out that with some used equipment--like a 1973 used airplane--there is a very limited market and, therefore, offering the equipment for sale separately could be time consuming and probably not cost-effective.

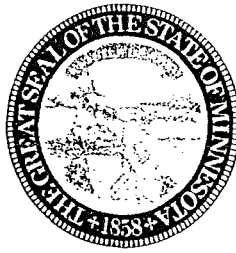
Finally, we note that the department did not comply with a requirement of the surplus property law. The department did not offer the 1973 King Air for sale to other state agencies or political subdivisions, as the law requires, before it was offered as a trade-in as part of the package to purchase a new airplane. In the future, the department should either follow this provision of the law, or get the law changed if it thinks the requirement is unreasonable.

### **Did the Department of Transportation's procurement process comply with the law and was it adequate to ensure that the state made an economical purchase?**

Except as noted above, we think the department's procurement process complied with the law. Moreover, we think the department's process was reasonable and business-like. We do not have the expertise, of course, to independently assess the quality or value of the airplane the department purchased. But, we know that the department conducted a detailed economic analysis of various options and demonstrated, at least to our satisfaction, a professional understanding of what equipment was needed.

Marc Asch  
State Representative

District 53B  
Ramsey County



# Minnesota House of Representatives

COMMITTEES: COMMERCE AND ECONOMIC DEVELOPMENT; FINANCIAL INSTITUTIONS AND INSURANCE;  
HEALTH AND HOUSING FINANCE; HEALTH AND HUMAN SERVICES; INTERNATIONAL TRADE AND TECHNOLOGY  
November 1, 1993

James Nobles  
Legislative Auditor  
Centennial Building  
First Floor South  
St. Paul, MN

Dear Mr. Nobles:

We request that you investigate the unauthorized expenditure of state funds for the purchase of the Governor's plane and how the contract was awarded.

It appears that \$2,858,751 in direct state funds and \$320,000 in proceeds from a trade-in has been spent on the purchase of the Governor's new plane. This is nearly **\$479,000 above the amount authorized by law**. We are outraged that the Governor should so blatantly flaunt the law and spend money over budget that has not been appropriated. In addition, we want you to ensure that competitive bidding was used in awarding this contract.

The actions of the Legislature and the Governor were quite specific. Funds were to be taken from two specified funds in specified amounts. No authorization was provided for the conversion of state property (the trade-in) to cash to supplement the appropriation. Clearly, the trade-in payments should have gone to the General Fund.

The background on the appropriation is as follows:

H.F. 2 of the 1993 Special Session of the Legislature, which became Chapter 4 of the 1993 First Special Session laws, states:

Sec.3 APPROPRIATION

\$2,700,000 is appropriated to the commissioner of transportation to replace a state airplane. \$1,620,000 is from the trunk highway fund and \$1,080,000 is from the state airports fund. The appropriation is available until June 30, 1995.

There is no legislative history available on this bill since it was not subjected to the normal process of public hearings and committee action. However, during the regular session it was proposed and the Legislature did not include the purchase in any

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enacted appropriations measures.

This Special Session appropriation was the part of the written agreement between the Governor, the Speaker of the House, the House Minority Leader, the Senate Majority Leader, and the Senate Minority Leader. That agreement, dated May 26, 1993, states:

**6. Replacement of State Aircraft**

-The parties agree to enact a bill or amendment which authorizes an appropriation of \$2.7 million to the commissioner of transportation to replace a state aircraft. \$1,620,000 shall be appropriated from the trunk highway fund, and \$1,080,000 shall be appropriated from the state airports fund.

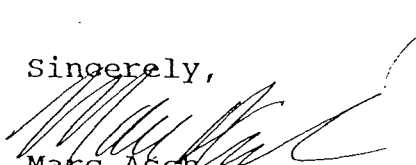
At the conclusion of the negotiating session between the Governor and Legislative leadership, this was referred to as the "Governor's plane" by Senator Moe in speaking to the Governor and the Governor agreed.

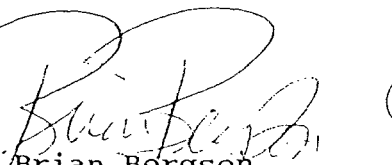
The intent of the Legislature is clear. A specific amount was appropriated for the purchase of a plane. No provision was included to permit the proceeds of the trade-in to be used to increase the total appropriation. The Governor fully concurred in that amount before the bill was even introduced as evidenced by his signature on the agreement with the legislative leadership. Further, the Governor signed the First Special Session H.F. 2.

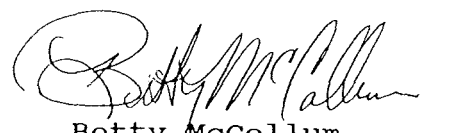
In tight money times, with cuts in services to people, we cannot let the Governor ignore the budget he signed. States as large as California and as close as Iowa do not supply state planes for their Governors -- they lease or fly commercially at a much lower cost. In fact, Oklahoma has just sold its Governor's plane because of the savings. Governor Carlson was willing to privatize Metro Mobility even when it left thousands of disabled Minnesotans stranded but he wants a state air force for himself. This is sheer hypocrisy.

We request that you examine this expenditure closely. It is ironic that this is part of the Governor's unallotment bill to control excess spending. Were proper procedures used in awarding the purchase contract? If the Governor's plane purchase was \$479,000 over budget, how can the people of Minnesota recover the \$479,000 in unauthorized spending?

Sincerely,

  
Marc Asch  
State Representative

  
Brian Bergson  
State Representative

  
Betty McCollum  
State Representative

CHAPTER 4—H.F.No. 2

*An act relating to state government; providing for replacement of a state airplane; providing for a budget contingency plan; appropriating money; amending Minnesota Statutes 1992, section 360.024.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1992, section 360.024, is amended to read:

360.024 AIR TRANSPORTATION SERVICES.

The commissioner shall charge users of air transportation services provided by the commissioner for all direct operating costs, including salaries and acquisition of aircraft. All receipts for these services shall be deposited in the air transportation services account in the state airports fund and are appropriated to the commissioner to pay all direct air service operating costs, including salaries. Receipts to cover the cost of acquisition of aircraft must be transferred and credited to the ~~hangar construction revolving account or fund whose assets were used for the acquisition.~~

Sec. 2. BUDGET CONTINGENCY PLAN.

(a) Notwithstanding the provisions of Minnesota Statutes, section 16A.15, subdivision 1, or any other law, the commissioner of finance shall determine on November 30, 1993, if forecast general fund revenues and expenditures permit funding the budget reserve and cash flow account at \$400,000,000.

(b) If the commissioner determines that for the remainder of the biennium, sufficient resources are not available to fund the reserve at \$400,000,000, then the commissioner shall, with the concurrence of the legislative commission on planning and fiscal policy, uniformly unallot all general fund and local government trust fund appropriations, up to a maximum of one percent of the total biennial appropriation from these funds to maintain the budget reserve and cash flow account at \$400,000,000 according to the following criteria and authorities:

(1) biennial allotment reductions under this authority may not exceed one percent of total biennial appropriations to these funds;

(2) the commissioner of finance may defer or suspend prior statutorily created obligations or entitlements to benefits that would prevent making the reductions to the extent necessary to accomplish uniform reductions;

(3) sufficient undistributed, unobligated balances of all appropriations must be reserved to satisfy the requirements under this section;

(4) appropriations for debt service and maximum effort school loans are excluded from calculation of the reductions under this section;

(5) the appropriations for aid to families with dependent children, Minnesota supplemental aid, and any appropriations for which a reduction would violate federal law are excluded from calculation of the reductions under this section;

(6) appropriations which would result in an insufficient remaining balance available so as to constitute an unconstitutional impairment of contract are excluded from the calculation of the reductions under this section;

(7) the reduction applied to all aids and credits paid by the department of revenue to cities, counties, towns, and special districts shall be allocated by the commissioner of revenue among those entities that receive aids and credits as a uniform percent of the sum of the aid plus levy base;

(8) the amounts reduced in the local government trust fund transfer to the general fund;

(9) the reduction share for judges', legislators', and constitutional officers' retirement annuities shall be allocated to the operating appropriations for the courts, the legislature, or constitutional officers, as applicable;

(10) the reduction share for the appropriation for firefighting expenses in Laws 1993, chapter 172, section 5, subdivision 4, and Indian treaty agreements funds appropriated in Minnesota Statutes, section 97A.165, shall be allocated to the appropriation for the department of natural resources; and

(11) notwithstanding the provisions of Minnesota Statutes, section 124A.032, the reductions authorized in this section apply to all programs for which appropriations were made in Laws 1993, chapter 224, and any other law providing appropriations to school districts, except the appropriation for debt service aid and homestead and agricultural credit aid amounts or other credits attributed to debt service accounts. These debt service aids or credits are included in determining the total amount of the reduction made to the total amount allotted. The commissioner of education shall allocate the reduction among school districts and other entities as a uniform percent of the sum of the state aid entitlement plus property tax levies associated with state aid programs. If aid to a school district is reduced under this section for the current school year or the next year after the levy year, the district's levy limit shall not be increased as a result of the reduction.

(c) If it is determined that unallotment is necessary, the commissioner of finance shall present to the legislative commission on planning and fiscal policy by November 30, 1993, a plan for effecting up to a one percent reduction in the state's general fund and local government trust fund biennial budget. The plan shall include, at a minimum, the following information at the appropriation account level: the amount of reduction in state operations; the amount of reduction by grant program; and the method of reduction in education aids, local government aid and credit programs, and income maintenance programs. The commissioner shall submit any necessary appropriation adjustments as part of the supplemental budget recommendations presented in 1994. The commissioner may modify the plan in response to recommendations of the commission. The commission shall act on the plan as a whole. If the commission does not vote on the plan by December 15, 1993, the plan is deemed approved.

(d) The legislative commission on planning and fiscal policy shall, with the cooperation of the executive branch, undertake a study of unallotment authority and related budget forecasting issues. The study must include consideration of guidelines and standards for unallotment in other states, division of executive branch and legislative branch unallotment responsibilities in other states, the scope and size of budget reserve and cash flow accounts in other states, and methods to reduce the cash flow needs of the state. The commission may also, as a result of the study, recommend modifications to this section. The commission shall complete the study and report findings and recommendations to the legislature by February 1, 1994.

### **Sec. 3. APPROPRIATION.**

\$2,700,000 is appropriated to the commissioner of transportation to replace a state airplane. \$1,620,000 is from the trunk highway fund and \$1,080,000 is from the state airports fund. The appropriation is available until June 30, 1995.

### **Sec. 4. EFFECTIVE DATE.**

This act is effective the day following final enactment.

Presented to the governor May 27, 1993

New language is indicated by underline, deletions by ~~strikeout~~.

# Research Department

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# Minnesota House of Representatives

Appendix C

December 21, 1993

TO: James Nobles, Legislative Auditor  
FROM: Mark Shepard, Legislative Analyst  
RE: Legal Controls on Use of State Appropriations

You asked for some general thoughts on legal controls that govern the use of state appropriations. This memo presents my thoughts on the issues covered in your letter.

There are a number of general rules that deal with these issues. While it is relatively easy to state these general rules, application of these rules to specific fact situations is often difficult. This is because a key factor in application of the rules is legislative intent, and it is often hard to establish this intent.

## **Laws prohibit expenditure of state funds except for purposes specified by an appropriation.**

Article XI, section 1 of the Minnesota Constitution provides that "No money shall be paid out of the state treasury except in pursuance of an appropriation by law".

Minnesota Statutes, section 10.31 makes it illegal for any state official or employee to use an appropriation for any purpose other than the purpose for which the money was appropriated. Section 10.17 makes it unlawful to incur indebtedness in excess of an appropriation. Other laws in chapter 16A establish procedures for assuring that expenditures comply with the laws described above.

The legislature has given executive agencies limited authority to transfer funds among certain appropriations. I believe that when an agency uses this authority properly to transfer funds, it is spending money for a purpose authorized by an appropriation.



**The legislature has a great deal of discretion over the scope of an appropriation.**

Each time the legislature appropriates money it makes two key decisions that place legal controls on executive agency actions:

1. It decides how much money to appropriate from the state treasury.
2. It specifies the purposes for which money is appropriated.

The legislature can choose to appropriate one lump sum for an entire agency, leaving it to the agency to decide how to allocate the appropriation among agency programs. On the other hand, it can appropriate money for discrete items within agency programs and activities.

An agency that receives an appropriation can spend the money only for the purposes stated in law. If the money is appropriated for a very broad purpose (e.g. "all programs and activities of the Department of Transportation), the department can spend the money for any purpose that is within the scope of the appropriation. If the money is appropriated for a very narrow purpose, the agency may spend the money only for that narrow purpose, at least in the absence of authority to transfer the appropriation.

**In the past, specific appropriation bills authorized transfers of appropriations.**

Traditionally, each biennium the major appropriation bills have authorized certain transfers of appropriations between programs and activities in an agency. Under this language, an agency could use money appropriated for one program or activity for another program or activity. The agency could do this only to the extent that the legislature has authorized it to do so.

Laws 1991, chapter 345, article 1, section 35 (which applied only to certain appropriations for the biennium ending June 30, 1993) is an example of the traditional boilerplate language. It provided that:

- If an appropriation in the article was specified by program, the agency could transfer money among programs, if the transfer would carry out legislative intent.
- If an appropriation in the article was specified by activity (i.e. within a program), the agency could transfer money among the activities specified in the section, if the transfer would carry out legislative intent.
- If an appropriation was specified for an item within an activity, that amount could not be transferred or used for any other purpose.

Under this boilerplate, even if the legislature appropriated specific amounts for an agency's programs, the agency was free to transfer money among the programs, if this would carry out



legislative intent. For example, if the legislature appropriated \$1 million for program A, and \$1 million for program B, the agency could transfer money from A to B, and spend more than \$1 million on program B and less than \$1 million on program A (assuming that it was necessary to spend more than \$1 million on activity B to carry out legislative intent and that the program A could be carried out consistent with legislative intent for less than \$1 million).

This ability for agencies to transfer money among programs exists only because the legislature has granted agencies this authority. The legislature can prohibit transfers, either by general language that applies to all agencies, or through language that applies to specific programs or activities.

**The 1993 legislature established a general law governing transfers of appropriations.**

The 1993 legislature discussed the topic of how much flexibility agencies should be granted to transfer appropriations among programs, activities, and items.

A bill proposed by the Department of Finance (H.F. 1175) proposed granting agencies permanent authority to transfer operational money between programs within the same fund. Under the original proposal, if the legislature appropriated money for a particular item, the agency could have used the money for a different activity or item in another program, without considering whether or not this carried out legislative intent.

The legislature partially accepted the Department of Finance language granting agencies permanent authority to transfer operational money between programs within the same fund (Minnesota Statutes, 1993 Supplement, section 16A.285). However the legislature imposed two additional conditions:

1. The transfer must be consistent with legislative intent.
2. If an amount is specified for an item within an activity, that amount cannot be transferred.

Interestingly, it appears that this language--unlike previous boilerplate--does not permit transfers of appropriations among activities within the same program. This omission may have limited practical effect, because the legislature usually appropriates money by program and item, and not by activity.

Thus an agency may supplement an appropriation for one program with other resources from another program, under the conditions specified in section 16A.285. Note that this section does not contain authority to make transfers between agencies.

Other 1993 appropriation bills may have authorized other transfers of specified funds. I have not examined these other bills.

Any transfer or use of money that does not comply with the conditions above would be illegal under Minnesota Statutes, sections 10.17 or 10.31.

**The legislature sometimes permits agencies to supplement appropriations, other than by transfer from another direct appropriation.**

Gifts: The legislature has granted some agencies the authority to accept gifts. (The legislature has established a procedure under which the state treasurer and the commissioner of finance approve acceptance of these gifts. There is a standing appropriation of gift funds for the purpose of carrying out the terms of the gift. Minn. Stat. sec. 7.09, 7.12). Thus in some cases, the legislature may appropriate a specified amount for an item, and the agency may supplement the direct appropriation with gifts, thus spending more on the item than was directly appropriated.

Private funding: In other cases, there may be an understanding that a private group will provide cash or in-kind assistance to carry out a function that also is supported by a state appropriation. Again, this arrangement has the effect of supplementing the direct appropriation with other funds (in this case, not state funds).

Sale of agency property: The legislature has authorized the commissioner of administration to sell surplus property on behalf of an agency. The law authorizing these sales provides that the proceeds are appropriated to the agency on whose behalf the sale was made, to be used to purchases similar property (Minn. Stat. 16B.29).

**Legislative intent is a key issue.**

Laws permit agencies to transfer funds among programs only if in accord with legislative intent. In many cases legislative intent may not be clear. The executive branch likely could not transfer appropriated funds to create a new program that had not been considered by the legislature. Also, the executive likely could not transfer appropriations to fund an existing program at a level that had been considered and rejected by the legislature. On the other hand, a transfer likely would be permitted if funds in addition to those originally appropriated were needed to complete an activity in a manner that was intended by the legislature.

The mechanism that the legislature has adopted for reporting of transfers does not assure legislative input before the transfers are made. Minn. Stat. sec. 16A.285 provides that before transferring money the agency must first notify the commissioner of finance as to the type and intent of the transfer. The commissioner must report transfers to the chairs of the money committees, but there is no requirement that this occur before the transfer takes place.

MS/ct

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## Senate

State of Minnesota

January 6, 1994

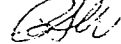
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To: James R. Nobles, Legislative Auditor

From: Peter S. Wattson, Senate Counsel   
296-3812

Subj: Legal Limits Imposed by Appropriations

You have asked a series of questions about the legal limits imposed by appropriations on spending state money. I shall answer each of them in turn.

1. *When is it acceptable, and when is it unacceptable, for a state agency to supplement an appropriation with other resources?*

I assume that by "resources" you mean money. Minnesota Statutes, section 16A.275, requires agencies to deposit receipts totaling \$250 or more in the state treasury daily, with limited exceptions. Section 16A.72 requires that "All income, including fees or receipts of any nature, shall be credited to the general fund," with certain exceptions. So, subject to those exceptions, all money received by any state agency is deposited in the state treasury and most of it is credited to the general fund.

The Minnesota Constitution, article XI, section 1, provides that "No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." A state agency may not spend any money from any source without an appropriation. Therefore, it may not supplement an appropriation with other money except pursuant to another appropriation. For most agencies, there are dozens of appropriations to choose from.

The problem to which your question is addressed, I believe, is a problem of multiple appropriations for overlapping purposes. It is a problem of determining the intent of the Legislature when there is more than one use to which an appropriation may be put, or more than one appropriation that may be used for the same purpose. Did the Legislature intend there to be an overlap?

In ascertaining legislative intent for an appropriation, you must first read the words of the appropriation. But appropriation laws are necessarily brief and broad, and the meaning of the words is often ambiguous. If so, Minnesota Statutes, section 645.16, authorizes you to go beyond the words of the law to resolve the ambiguity:

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 by considering, among other matters:

- (1) The occasion and necessity for the law;
- (2) The circumstances under which it was enacted;
- (3) The mischief to be remedied;
- (4) The object to be attained;
- (5) The former law, if any, including other laws upon the same or similar subjects;
- (6) The consequences of a particular interpretation;
- (7) The contemporaneous legislative history; and
- (8) Legislative and administrative interpretations of the statute.

For appropriation acts, this usually means considering the budget request that gave rise to the appropriation. The Governor's detailed budget request, as presented to the finance divisions in both houses, is usually the best source for a more detailed explanation of what the words of an appropriation were intended to mean. But the finance divisions receive reams of documents in addition to what is in the Governor's budget books, and the fiscal analysts who work for each division try to keep them in decent order for future reference to answer questions about legislative intent. Even when an appropriation is made in response to a request from someone other than a state agency, there is usually a memorandum or letter of some kind that explains the intended use of the money, and the fiscal analyst is likely to have it.

The tough questions arise, however, when there is no documentation. That usually happens because of changed circumstances or unforeseen events that were never considered during the legislative process. In that event, I believe the proper procedure is to consult with those legislators most deeply involved with the appropriation and get their opinions. Most often, this will start with the chairs of the conference committee on the bill, then proceed to other members of the conference committee and to the chairs of the committees on Finance and Ways and Means. In some cases, other members are involved as well. There will also be staff members with records or memories or both. Even with all of that consultation, it will not always be clear to you what was intended at the time, or what should be done about it now. In that event, I believe it is appropriate to defer to the state agency's judgment. They, after all, are the ones responsible for getting the job done.

The problem of determining legislative intent, of course, gets even worse where an agency has been given authority to transfer money from one appropriation to another. Then you must consider, not only the intent of the two different appropriations, but also the intent of the authority to transfer between them. In determining legislative intent for transfer authority, I would suggest you follow the same procedure as for determining legislative intent for each of the two appropriations: read the law; if the law is ambiguous, find the documentation and consult with key legislators and staff.

2. *Are there limitations on the type of resources that a state agency can use to supplement an appropriation?*

Yes. To the extent a state agency desires to use money to supplement an appropriation, it must have another appropriation of that other money. If it desires to transfer that other money into the first appropriation, it must have authority to make the transfer.

If an agency desires to supplement an appropriation with resources other than money, there are separate procedures it must follow. If it wants to accept a gift of real estate or personal property other than money from outside state government, it must follow the gift acceptance procedures of Minnesota Statutes, sections 7.09 to 7.12 or 94.17 to 94.19, which apply to all agencies, or the specific gift acceptance procedures that have been provided for most of the larger agencies by separate statutes. If an agency wants to accept a transfer of real estate from another state agency, it must follow the procedures in sections 94.09 to 94.16. If an agency wants to accept a transfer of surplus personal property (such as supplies, materials, and equipment) from another state agency, or to sell surplus property and use the proceeds to supplement an appropriation, it must work through the Commissioner of Administration under section 16B.29. This authority has not been given to other agencies generally, but I believe a change in the law to that effect would be consistent with the current movement to "reinvent government."

The Commissioner of Transportation is one official who has already been given similar authority. He may dispose of surplus real estate acquired for trunk highway purposes under Minnesota Statutes, section 161.44, and dispose of surplus personal property acquired for highway purposes under section 161.41. A sale of surplus personal property must be done under the competitive bidding provisions of chapter 16B. The proceeds are deposited in the state treasury and credited to the trunk highway fund. There is no open appropriation of these dedicated receipts, but each omnibus appropriation act for the Department of Transportation includes a contingent appropriation "in order to take advantage of an unanticipated receipt of income to the trunk highway fund." *See, e.g.,* Act of May 19, 1993, ch. 266, 1993 Minn. Laws 1501-02. This appropriation is only available with the approval of the Governor after consultation with the Legislative Advisory Commission. *Id.*

There are miscellaneous other statutory appropriations that a given state agency may use to supplement a given appropriation, such as Minnesota Statutes, sections 84A.53,

subdivision 2, and 94.165, which allow the Commissioner of Natural Resources to sell tax-forfeited land in a consolidated conservation area and use the proceeds to acquire lands or interests in lands within the outdoor recreation system.

3. *When is it acceptable, and when is it unacceptable, for an agency to transfer and use state resources appropriated for a specific activity or program to a different activity or program?*

As I said in answer to Question 1, that depends on the words used in the law authorizing the transfer and, where the words of the law are ambiguous in their application to a specific situation, it depends upon what you determine the legislative intent to have been based on your review of the available documentation and consultation with the legislators and staff involved.

No transfer may be made without an authorization by law, but over the last two decades the omnibus appropriation acts have become littered with transfer authority. The general pattern was to authorize an agency to transfer money from one program to another in the same section of the appropriation act with the advance approval of the Commissioner of Finance and an immediate report to the committees on Finance and Appropriations. The Commissioner of Finance was not to approve a transfer unless he believed it would carry out the intent of the legislature. *See, e.g.,* Act of June 4, 1991, ch. 345, art. 1, § 35, 1991 Minn. Laws 2616-17. But the omnibus appropriation acts for human services and education aids had general transfer authority that was different from most other state agencies, and many agencies had special transfer authority of their own.

In 1993, the first comprehensive transfer authority was codified in statute, Minnesota Statutes, section 16A.285. It went beyond what had formerly been only in session laws by authorizing transfers, not only between appropriations in the agency's section of an omnibus bill, but also between those appropriations and appropriations made in separate bills or in statutory appropriations. It also eliminated the requirement that the Commissioner of Finance approve each transfer (based on testimony that Finance Department employees spent substantial time reviewing transfer requests and almost never turned them down). Notice to the Commissioner of Finance was retained, and notice to the chairs of Finance and Ways and Means was substituted for notice to the committees. A transfer still must be consistent with legislative intent.

This broad transfer authority means, essentially, that an agency may use any money appropriated to it for any purpose for which it has received an appropriation, which usually covers everything the agency is authorized by statute to do. How does one reconcile this broad transfer authority with the intense and extended discussion legislators have about the purposes to which each appropriation may be put? On the one hand, it is obvious that legislators new to the appropriation process are not immediately aware of an agency's transfer authority. On the other hand, although a new agency head might relish the opportunity to transfer money from one appropriation to another, more experienced agency heads know that they must be careful not to stray too far from legislative intent or they will

James R. Nobles  
January 6, 1994  
Page 5

suffer in the next round of budget decisions. And the extended discussion by legislators gives them a better idea of what members think is important.

4. *What actions would constitute a violation of either Minnesota Statutes, section 10.17, (prohibiting an official from exceeding an appropriation) or Minnesota Statutes, section 10.31, (making it illegal for a person to use state funds for any purposes other than those for which the funds were appropriated)?*

In the case of the \$2.7 million appropriation to replace a state airplane, the indebtedness would be incurred when the state took delivery of the airplane. If the Commissioner of Transportation had agreed to pay more than \$2.7 million for that airplane without having an additional appropriation to pay for it, the commissioner would have violated section 10.17. The additional appropriation might have been provided through a valid transfer of money from another appropriation into this one, or by identifying a separate appropriation that could, by its terms, be used to cover the additional amount. The transfer or identification would have had to occur before the plane was delivered and the indebtedness incurred.

In the case of the state airplane, if the Commissioner of Transportation had taken money appropriated for highway debt service and used it to cover the excess cost of the airplane, he would have violated section 10.31. That is both because the use to which the highway debt service appropriation must be put is very clear (it ties directly to the amount of trunk highway bonds outstanding), and because there is specific language in the appropriation act that says "No transfer may be made from the appropriations for debt service to any other appropriation." Act of May 19, 1993, ch. 266, § 2, subd. 12, 1993 Minn. Laws 1501. Most other appropriations are not so narrowly construed, and the Commissioner of Transportation's transfer authority is even more broad, since it does not include the common restriction that "If an amount is specified for an item within an activity, that amount must not be transferred or used for any other purpose." Minn. Stat. § 16A.285; *see, e.g.* Act of June 4, 1991, ch. 345, art. 1, § 35, subd. 3, 1991 Minn. Laws 2617.

I hope this memorandum helps to dispel some of the fog that shrouds the appropriation process. If I can be of further assistance, please let me know.

PSW:ph  
cc: Senator Gene Merriam

STATE OF MINNESOTA  
**Office of the Attorney General**

---

TO : JAMES R. NOBLES  
LEGISLATIVE AUDITOR

DATE : March 7, 1994

FROM : KENNETH E. RASCHKE, JR.  
Assistant Attorney General

PHONE: 297-1141 (Voice)  
296-1410 (TDD)

SUBJECT : **Purchase of Airplane for Department of Transportation**

In your letter to Attorney General Hubert Humphrey, you ask that we review the information you provided concerning the 1993 purchase of an airplane for the Department of Transportation in light of amounts legislatively appropriated to the department and certain statutes prohibiting any expenditure or indebtedness in excess of appropriations or the use of appropriated money for any purpose other than for which it was appropriated.

As we understand the facts, an airplane was purchased in 1993 by the Department of Administration on behalf of the Department of Transportation. For the airplane, the State paid \$2,858,751 and traded in an older airplane for which the State received \$320,000 credit toward the purchase price.

Minnesota Laws 1993, First Spec. Sess. ch. 4, § 3, appropriated funds specifically for airplane purchase as follows:

\$2,7000,000 is appropriated to the commissioner of transportation to replace a state airplane. \$1,620,000 is from the trunk highway fund and \$1,080,000 is from the state airports fund. The appropriation is available until June 30, 1995.

In addition, Minnesota Laws 1993, ch. 266, § 2, provided appropriations of funds for transportation. Subdivision 1 of that section set forth the gross amounts appropriated for fiscal years 1993, 1994 and 1995 and detailed the sources of that money by fund. Succeeding subdivisions of the section detailed "the amounts that may be spent from this appropriation for each program. . . ." Subdivision 10 provides:

Subd. 10 Equipment  
Summary by Fund

	[FY 1994]	[FY 1995]
General	15,493,000.00	15,493,000.00
Airports	5,000.00	5,000.00
Trunk Highway	59,000.00	59,000.00
	15,429,000.00	15,429,000.00



If the appropriation for either year is insufficient, the appropriation for the other year is available for it.

You indicate that the budget narrative submitted by the Department of Transportation relating to this appropriation listed "road equipment, information systems equipment, scientific equipment, electronic communication equipment, shop equipment and office equipment", but did not specifically mention aircraft or other aeronautic equipment.

You note that \$158,751 from this appropriation was used, in addition to the \$2,7000,000 appropriated by Special Session Chapter 4, and the trade-in, for the purchase. You ask us to consider whether the foregoing facts describe a violation of Minn. Stat. §§ 10.17 or 10.31 (1992) which provide as follows:

#### 10.17 OFFICIALS NOT TO EXCEED APPROPRIATION.

When there has been an appropriation for any purpose it shall be unlawful for any state board or official to incur indebtedness on behalf of the board, the official, or the state in excess of the appropriation made for such purpose. It is hereby made unlawful for any state board or official to incur any indebtedness in behalf of the board, the official, or the state of any nature until after an appropriation therefor has been made by the legislature. Any official violating these provisions shall be guilty of a misdemeanor and the governor is hereby authorized and empowered to remove any such official from office.

#### 10.31 MISAPPROPRIATION OF MONEY.

It is illegal for any official or head of any state department, or any employee thereof, to use moneys appropriated by law, or fees collected for any other purpose than the purpose for which the moneys have been appropriated, and any such act by any head of a department, or any state official, is cause for immediate removal of the official or head of a state department from the position held with the government of this state.

(Emphasis added).

In our view, the facts as described in your letter would not likely be held to constitute a violation of the cited provisions. Both of the sections specifically refer to "appropriation" or "moneys appropriated." Those terms as defined by statute and as used in the constitution, are generally limited to describing express legislative authority to expend a defined amount of money from the treasury. Minn. Stat. § 16A.011, subd. 4 (1992) provides:

"Appropriation" means an authorization by law to expend or encumber an amount in the treasury.

The Minnesota Supreme Court in InterFaculty Organization v. Carlson, 478 N.W.2d 192 (Minn. 1991), said:

An "item of appropriation of money" is a separate and identifiable sum of money appropriated from the general fund dedicated to a specific purpose.

Id. at 195.

Thus, it seems clear that the term "appropriation" as used in sections 10.17 and 10.31 concerns itself exclusively with the authority to expend money.<sup>1</sup> Indeed, Section 10.31 refers specifically to "moneys appropriated by law."

Likewise, the term "indebtedness" as used in section 10.17 would customarily refer to an undertaking to pay money. See, e.g., Commons v. Mulvehill, 679 F. Supp. 1071 (N.D. Ala. S.D. 1988) where the court notes:

[T]he word "indebtedness" implies a liquidated amount, something qualified. Strictly construed, the word indicates a sum of money due by certain and express agreement; a claim for which an action of debt will presently lie."

See also McCrea v. First National Bank of Austin, 162 Minn. 455, 203 N.W. 220 (1925) (a sum presently owed, not a contingent liability). Thus, in our view, the prohibition of section 10.17 relates specifically to an undertaking to pay money for a purpose in excess of legislatively granted authority to expend money for that purpose. In that regard, an agreement to transfer or the actual transfer of the existing airplane to the vendor in connection with the transaction is not technically pertinent to determining whether the Department expended moneys or incurred "indebtedness" in excess of appropriations. Since the airplane is not money, its exchange as part of the transaction would not technically fall within the terms of the cited sections.

The specific statutory authority for the direct transfer of the old plane to the vendor in exchange for reduction in the money cost for purchase of the new plane, is somewhat elusive however. We have not located express statutory authority for the exchange of state personalty or the transfer of state property as a "trade-in" on property to be acquired. Such authority might reasonably be implied, however, from the authority of the Commissioner of Administration to "purchase, rent or otherwise provide for furnishing . . . equipment" (Minn. Stat. § 16B.06, subd. 1(b) 1992) coupled with the authority to sell surplus property, direct the proceeds to the appropriate agency for purchase of similar needed equipment. Minn. Stat. § 16B.29 (1992). Cf. Minn. Stat. § 297A.01 which defines "sale" and "purchase" to include any transfer of personal property for consideration in money "or by exchange or barter." See also Ambrosich v. City of Eveleth, 200 Minn. 473 274 N.W. 635 (1937), where the court held that the power to acquire by "purchase" included the lesser power to lease. Nonetheless, if such transactions are contemplated, it would be preferable to have the authority explicitly spelled out in statute.

Aside from the trade-in of the existing airplane, you question the use of \$158,751 from the "equipment" appropriation of chapter 266, for airplane purchase, in light of the fact that the "budget narrative" submitted by MnDOT specifically mentions various specified type of equipment, but makes no mention of aircraft. In our view, in light of the liberal construction which has been historically accorded appropriations language by our courts, it would likely be held that all or any part of the "equipment" appropriation was available for airplane purchase.

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1. Cf. 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." (Emphasis added.)

It seems clear that an airplane would normally be considered to be an item of "equipment" as that term is normally understood. As defined by the American Heritage Dictionary (Second College Ed. 1985) equipment means:

1. The act of equipping or the state of being equipped, 2. Something with which a person, organization or thing is equipped, 3. The rolling stock esp. to a transportation system, or 4. The qualities or traits that make up the mental and emotional resources of an individual.

Vehicles and conveyances are commonly included within the broad meaning of the term. See, e.g., National Bus. Sys. Inc. v. Borg-Warner Acceptance Corp., 792 F.2d 710, 714 (8th Cir. 1986) (a yacht was "equipment" within the meaning of Minnesota Uniform Commercial Code); McClary v. State, 211 Tenn. 63, 362 S.W. 2d 457 (1962) (automobile could be forfeited as "equipment" used in gambling).

The fact that an airplane purchase may not have been specifically contemplated when the equipment appropriation was made, does not preclude use of the appropriated funds for that purpose absent some express limitation to that effect. Our courts have held that "funds appropriated for general purposes may be used to cover any cost that falls within the scope of the authorization." First Trust Co., Inc. v. State, 449 N.W.2d 491 (Minn. App. 1989). In that case the court held that a 1985 appropriation to the State University Board for "non-instructional costs" could be used to make payments in connection with installation of an alternative fuel system at St. Cloud State University where there was no express limiting language in the appropriation preventing such use. The court contrasted that appropriation with those in 1987 and 1989 as well as the one considered in United States Fire Ins. Co. v. Minnesota State Zoological Bd., 307 N.W.2d 490 (Minn. 1981), all of which contained express language precluding use of generally appropriated funds for a particular purpose.

Furthermore, the fact that a "budget narrative" presented to the legislature detailed spending plans which did not include airplane purchase, does not in itself impose any legal restriction upon the nature of "equipment" which could be purchased with the appropriated funds. In Inter Faculty Organization v. Carlson, 478 N.W.2d 192 (Minn. 1991), the Minnesota Supreme Court addressed the issue of resort to legislative "working papers" for purposes of identifying particular items of "appropriation" which could be subjected to gubernatorial vetoes. There the court declined to accord such documents any binding effect:

The parties seem to agree that the specific amounts are ascertainable by reference to the so-called "legislative working papers." However, these documents have not been enacted into law or incorporated by reference into the bill itself and we decline to study them or attach any more significance to them other than to comment that they simply manifest the process and analysis of the legislature in making its ultimate budgetary decision.

Id. at 196.

The court, in that case, cited Martinez v. Florida Legislature, 542 So. 2d 538 (Fla. 1989), which also had addressed the effect of working papers in restricting the use of portions of a gross appropriation amount. That court observed.

The legislature cannot give the force of law to something which it refuses to enact into law. Although the legislature's intent is evidenced by the statement of intent

and the working papers, the provisions in those documents cannot be binding. They are not equivalent to proviso language contained in a general appropriations bill enacted by the legislature.

Id. at 362.

Thus, while listing particular proposed uses for requested funds in budget documents may establish some political responsibility, absent changed circumstances, to adhere generally to the representations made, we do not believe that such a listing creates legally enforceable limitations of the sort that would exist if the appropriation language itself specified restrictions. Consequently, we have not identified any legal prohibition against use of money appropriated for "equipment" to help fund an authorized airplane purchase.

Your letter further makes reference to Minn. Stat. § 16A.285 (Supp. 1993) which provides:

An agency may transfer state agency operational money between programs within the same fund if: (1) the agency first notifies the commissioner as to the type and intent of the transfer; and (2) the transfer is consistent with legislative intent. If an amount is specified for an item within an activity, that amount must not be transferred or used for any other purpose.

The commissioner shall report the transfers to the chairs of the senate finance and house of representatives ways and means committees.

While this language does provide a mechanism for transfer of money between "programs" within the same "fund", it is not clear that this procedure is necessarily implicated in the instant transaction. The terms "program" and "fund" are not specifically defined in that section. Minn. Stat. § 16A.10, subd. 1 (Supp. 1993) dealing with budget preparation provides:

Estimated expenditures must be classified by funds and character of expenditures and may be subclassified by programs and activities. Agency revenue estimates must show how the estimates were made and what factors were used.

That language does require that appropriations or estimated expenditures be classified by "fund" but does not necessarily require classification by "program". Nor is there a specific explanation of any means whereby separate programs must be identified. In the instant case, the information supplied does not indicate that purchase of "equipment" and purchase of a replacement airplane are, of necessity, separate "programs" which would call for employment of the mechanism set forth in section 16A.285.

If the airplane purchase were to be viewed as a separate "program", however, it would seem that the mechanism set forth in section 16A.285, could be employed to transfer money within the same "fund." In the instant case, it is not particularly clear whether the transfer would be considered within the same "fund" for the purposes of the section. Both chapter 266, section 2, subd. 10 and special session chapter 4 section make reference to money from the Trunk Highway Fund and the Airports Fund. However, the gross amounts are not in the same proportion. The information provided does not indicate the particular fund or funds from which the chapter 266 money was derived to help pay for the airplane. It does appear,

however, that there were sufficient trunk highway appropriations in chapter 266 to make up a \$158,751 supplement to the trunk highway appropriation in Extra Session Chapter 4. Thus, such a "transfer" could be viewed as within the same fund.<sup>2</sup> Consequently, while the language in section 16A.285 is somewhat ambiguous, it would appear available to transfer funds for purposes of airplane purchase, if indeed two different programs are deemed involved.

I hope this analysis is helpful to you in evaluating the transaction at issue.

KER:sr

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2. We do not address whether the amount of trunk highway funds which may have expended from either appropriation may be viewed as devoted to trunk highway purposes within the meaning of Minn. Const. art. XIV, §§2, 6.

## **Department of Transportation: Airplane Purchase**

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Minnesota  
Department of Transportation  
Transportation Building  
395 John Ireland Boulevard  
Saint Paul, Minnesota 55155

March 31, 1994


Mr. James R. Nobles  
Legislative Auditor  
Office of the Legislative Auditor  
Centennial Building  
St. Paul, Minnesota 55155

Dear Mr. Nobles:

Thank you for the opportunity to review and comment on your report concerning Mn/DOT's aircraft purchase. We found your report to be both accurate and objective.

It is our intent to pursue implementation of the single recommendation made in the report. That recommendation is that Mn/DOT seek explicit legal authority for the trade in of equipment. We will seek that authority as part of the appropriation process for equipment in the 1995 Legislative session.

Sincerely,



James N. Denn  
Commissioner