



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

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November 2, 2009

The Honorable Scott Meacham
Treasurer of the State of Oklahoma
Room 217, State Capital Bldg.
Oklahoma City, OK 73105

Re: Use of the Constitutional Reserve Fund, commonly referred to as the Rainy Day Fund.

Dear Treasurer Meacham:

You have asked this office for a letter of advice concerning appropriations from the Constitutional Reserve Fund established in Art. 10, § 23 of the Oklahoma Constitution, and commonly referred to as the Rainy Day Fund. You ask, in light of recent occurrences, how much of that fund is available or could be made available for appropriation.

As originally proposed in 1985 in House Joint Resolution and adopted by the people in State Question 587, monies in the Constitutional Reserve Fund became available in two different circumstances:

1. Up to one-half ($\frac{1}{2}$) of the balance at the beginning of the current fiscal year became available to be appropriated "**when the certification by the State Board of Equalization for said forthcoming fiscal year General Revenue Fund is less than that of the current fiscal year certification,**"
2. The other one-half ($\frac{1}{2}$) of the balance became available to be appropriated "upon a **declaration** by the Governor **that emergency conditions exist**, with concurrence of the Legislature by a two-thirds ($\frac{2}{3}$) vote of the House of

Representatives and Senate for the appropriation; or said one-half (1/2) could be appropriated upon a joint declaration of emergency conditions by the Speaker of the House of Representatives and the President Pro Tempore of the Senate, with a concurrence of a three-fourths (3/4) vote of the House of Representatives and Senate.”

Thus, as originally enacted, if both triggering events occurred, the fund could be completely diminished, the first one-half (1/2) becoming available upon the Board of Equalization’s Certification that the funds available for the upcoming fiscal year are less than those of the current fiscal year, and the second one-half (1/2) becoming available upon the declaration of an emergency. Newspaper accounts of the debates on the resolution which originally established the Constitutional Reserve Fund confirm that the intent of the provision was to permit the possible depletion of the Fund, when both triggering events occurred.¹

The 2003 amendments to Art. 10, § 23 which were proposed by House Bill 1249 of the First Regular Session of the Forty-Ninth Legislature, and adopted by the people in State Question 708, amended the provisions regarding when and what portions of the Reserve Fund became available for appropriation. To the two existing triggering events — the certification of fewer available funds, and the declaration of an emergency —, the 2003 amendment added a third triggering event, a failure of revenue. The 2003 amendments also changed the portions of fund available for appropriations when each of the three triggering events occur. Under the 2003 amendments:

1. Up to three-eighths (3/8) of the balance at the beginning of the current fiscal year in the Constitutional Reserve Fund may be appropriated for the forthcoming fiscal year, when the certification by the State Board of Equalization for said forthcoming fiscal year General Revenue Fund is less than that of the current fiscal year certification. In no event shall the amount of monies appropriated from the Constitutional

¹“House Approves Changes in State Budget Formula, “ The Oklahoman, Jan. 29, 1985, front page; p.1.

Reserve Fund be in excess of the difference between the two said certifications.

Okla. Const. Art. 10 § 23 (6a).

2. Up to three-eighths (3/8) of the balance at the beginning of the current fiscal year in the Constitutional Reserve Fund may be appropriated for the current fiscal year if the State Board of Equalization determines that a revenue failure has occurred with respect to the General Revenue Fund of the State Treasury.

Okla. Const. Art. 10, § 23(7).

3. Up to one-quarter (1/4) of the balance at the beginning of the current fiscal year in the Constitutional Reserve Fund may be appropriated, upon a declaration by the Governor that emergency conditions exist, with concurrence of the Legislature by a two-thirds (2/3) vote of the House of Representatives and Senate for the appropriation; or said one-quarter (1/4) could be appropriated upon a joint declaration of emergency conditions by the Speaker of the House of Representatives and the President Pro Tempore of the Senate, with a concurrence of a three-fourths (3/4) vote of the House of Representatives and Senate.

Okla. Const. Art. 10, § 23(8).

In the situation the State faces, the first two triggering events have occurred. The Board of Equalization certified prior to the beginning of the 2009 regular legislative session that fewer certified funds were available for fiscal year 2010 than for 2009. The reduction in the certified amount was more than three-eighths (3/8) of the existing balance in the Reserve Fund. This certification thus made the entire first three-eighths (3/8) of the balance in the Fund available for appropriation. While no appropriations from the Fund were made during the regular 2009 legislative session, there is no requirement under the constitutional provision that once the triggering event occurs, that the funds available for appropriation be appropriated during a regular legislative session. Thus, the first

three-eighths (3/8) of the Reserve Fund remain available for appropriation for fiscal year 2010.

The second triggering event occurred when the State began to experience failures of revenue early in fiscal year 2010. This made the second three-eighths (3/8) of the Fund available for appropriation. Accordingly, the occurrences thus far this year have made six-eighths (6/8) of the balance of the Fund at the beginning of the current fiscal year available for appropriation.²

Further, if an emergency is declared by the requisite majorities of each house, the third triggering event, the remaining one-fourth (1/4) of the balance would become available for appropriations for fiscal year 2010.

This letter constitutes the best legal opinion of the author after careful research, but is not an official Opinion of the Attorney General.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tom Gruber', with a long horizontal line extending to the left.

Tom Gruber
First Assistant Attorney General

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²Because the leadership determined not to use any money from the Fund prior to the start of the 2010 fiscal year, the balance which is subject to reductions by virtue of all three triggering events is the same, as the 2009 balance being unchanged was also the balance at the beginning of fiscal year 2010.