

**OPINION
64-321**

November 30, 1964 (OPINION)

Mr. James R. Kittle, Director

Division of State Parks

State Historical Society

RE: State parks - Highways - Funds for maintenance

This is in reply to your letter of November 23, 1964, asking the following questions:

1. Are the roads in state parks, that are on state-owned property (not leased property) part of the North Dakota highway system?
2. If the roads are part of the state highway system, can the State Highway Department legally expend funds for construction, signing, safety, maintenance, and snow removal?
3. If the roads are not part of the state highway system can the Division of State Parks legally pay or transfer funds to the State Highway Department for services, such as snow removal? Can the State Highway Department legally accept funds to perform maintenance and services from another state agency?"

The state highway system is perhaps best described by Section 24-01-01.2 of the North Dakota Century Code which provides:

"STATE HIGHWAY SYSTEM - MILEAGE. The state highway system consisting of main market, arterial and interstate public roads, as heretofore created, shall not exceed seven percent of the entire road mileage of the state, whether such roads are township, county, or state roads, and in no case shall such highway system exceed seven thousand seven hundred miles in length."

Authority to designate roads as in the state highway system is vested in the state highway commissioner by Section 24-01-02 of the North Dakota Century Code which provides:

"DESIGNATION OF STATE HIGHWAY SYSTEM. The commissioner is hereby vested with complete authority to designate, locate, create, and determine what roads, highways and streets shall constitute the state highway system, subject however, to such conditions, requirements and mileage limits as provided for by law. The total mileage of the state highway system may be increased by not to exceed one hundred miles in any one calendar year. In designating, locating, creating and

determining the several routes of the state highway system, the commissioner shall take into account such factors as the actual or potential traffic volumes, the construction of by-passes and alternate routes, the conservation and development of the state's natural resources, the general economy of the state and communities, and the desirability of fitting such system into the general scheme of the nationwide network of highways."

We believe from these two statutory quotations you can see that a "yes" or "no" answer to your first question cannot be given as a matter of law. From what we know of the state park system it is conceivable that some roads located in state parks would be main market, arterial, or interstate public roads as specified in the above quoted Section 24-01-01.2, and depending on other surrounding circumstances it is conceivable that the state highway commissioner pursuant to the above quoted Section 24-01-02 may have designated such as part of the state highway system. While we do not claim to be experts on location, condition, etc., of state park roads we would assume that the majority of such roads are more closely adapted to park rather than highway use and therefore are not and would not as such be designated part of the state highway system.

In reply to your second question Section 24-01-03 of the North Dakota Century Code provides in part:

"RESPONSIBILITY FOR STATE HIGHWAY SYSTEM. The commissioner shall be responsible for the construction, maintenance, and operation of the state highway system and he shall be authorized to enter into a co-operative agreement with any municipality for the construction, maintenance, or repair of any urban connecting street.

* * *

This statute in our opinion generally sets out the method of handling the so-called state highway system. More specific statutory provisions detail how same is done. However, on this basis of this statute we believe it could in most instances be correctly stated that the State Highway Department can legally expend funds for construction, signing, safety, maintenance, and snow removal on state highways.

We might also in this regard call to your attention Section 24-05-02 of the North Dakota Century Code providing:

"FUND - HOW EXPENDED. The county road fund created by Section 24-05-01 shall be expended only for road machinery and for grading, ditching, and surfacing, in proper form and condition for public travel, such highways or parts of highways, howsoever established, as constitute the principal thoroughfares of the county, communicating with shipping points and market places resorted to by inhabitants of the county, for which the means otherwise provided, in the opinion of the board of county commissioners, are not sufficient."

Section 24-02-37 of the Supplement to the North Dakota Century Code provides:

"STATE HIGHWAY FUND - HOW EXPENDED. The state highway fund, created by law and not otherwise appropriated and allocated, shall be applied and used for the purposes herein named and in the following order of priority:

1. The cost of maintaining the state highway system;
2. The cost of construction and reconstruction of highways in the amount necessary to match in whatever proportion may be required, federal aid granted to this state by the United States government for road purposes in North Dakota; and
3. Any portion of the highway fund not allocated as provided in subsections 1 and 2 may be expended for the construction of state highways without federal aid or may be expended in the construction, improvement, or maintenance of such state highways.

All funds heretofore appropriated or hereafter appropriated or transferred to the department, whether earmarked or designated for special projects or special purposes or not, shall be placed or transferred into a single state highway fund in the office of the state treasurer and any claims for money expended by the department upon warrants prepared and issued by the department of accounts and purchases and signed by the state auditor under the provisions of this title shall be paid out of the state highway fund by the state treasurer; provided however that the commissioner shall keep and maintain complete and accurate records showing that all expenditures have been made in accordance with legislative appropriations and authorizations."

On the basis of the above statutory provisions it would appear that neither state nor county funds could be expended on state park roads except insofar as same constitute a part of either the state or county highway system which would apparently depend on whether or not the road concerned constituted a main traveled road of either county or state system. A similar situation would be faced with regard to use of township road funds. Assuming that the appropriate funds were saved harmless from cost in projects involving strictly State Park roads even though men and equipment (not paid for from such funds) were utilized in such project, we are unable to see that same would be in any way objectionable. In this regard we call your attention to Section 24-02-36 of the North Dakota Century Code which provides:

"STATE FUNDS NOT USED ON FEEDER ROADS. Except as provided in Section 24-01-48 no state funds shall be expended for feeder roads or other roads not on the state highway system except for the necessary administrative costs and for such work as is reimbursable from federal or county funds or from funds of other organizations or governmental departments for which reimbursement arrangements have been made. After completion of any such co-operative construction, all authority and control over roads off the state highway system shall be returned to the local authorities under whom control was vested previously."

Looking to the appropriation for State Historical Society and State Parks Committee we note items appropriated for specific state parks and items appropriated for "maintenance and operation, North harmless from cost in projects involving strictly state park roads even though men and equipment (not paid for from such funds) were utilized in such project, we were unable to see that same would be in any way objectionable. In this regard we call your attention to Section 24-02-36 of the North Dakota Century Code which provides:

"STATE FUNDS NOT USED ON FEEDER ROADS. Except as provided in Section 24-01-48 no state funds shall be expended for feeder roads or other roads not on the state highway system except for the necessary administrative costs and for such work as is reimbursable from federal or county funds or from funds of other organizations or governmental departments for which reimbursement arrangements have been made. After completion of any such co-operative construction, all authority and control over roads off the state highway system shall be returned to the local authorities under whom control was vested previously."

Looking to the appropriation for State Historical Society and State Parks Committee we note items appropriated for specific state parks and items appropriated for "maintenance and operation, North Dakota parks." We see no reason why such items where actually available could not be used for services such as snow removal whether dealing with county, state or other agencies. Also, we see no reason why the State Highway Department could not accept such funds as reimbursement for use of men and equipment where appropriate.

HELGI JOHANNESON

Attorney General