

**OPINION
70-345**

October 22, 1970 (OPINION)

Mr. James E. Sperry

Superintendent

State Historical Society

RE: State - Peace Garden - Responsibility of

State Historical Society

This is in reply to your letter of October 13, 1970, in effect asking the following questions:

1. Is the State Historical Board, as trustee of the state of North Dakota responsible for the supervision of construction of any buildings constructed upon the International Peace Garden land when the funds therefore have been appropriated by the State Legislature? Is the responsibility the same for buildings constructed thereon when funds are from sources other than state appropriation?"
2. Is the State Historical Board responsible for supervising correction of apparent inadequate sanitary facilities at the International Peace Garden and for the general maintenance of buildings previously erected and water supply, sewage, and utilities serving such buildings?
3. How would you define the statutory responsibilities imposed upon the State Historical Board by sections 55-05-02.4, 55-05-02.6, and 55-05-02.7?
4. What is the state responsibility and liability, particularly that the State Historical Board, for certain motor vehicles presently owned, licensed, and insured by the state which are being operated by employees of the International Peace Garden for maintenance of the garden both in Canada and the United States? Is this procedure in accordance with the state law?
5. What procedures would be necessary to follow to transfer said vehicles to the title of the International Peace Garden?"

These questions are in very general terms and do not give specific examples of instances where the problems arise. On such basis our answers must also necessarily be in very general terms. The questions refer frequently to the term "responsibility" without further definition for purposes of these questions of the concept thereby expressed or the precise context in which used. In our opinion of date July 1, 1970, to your office we did previously attempt to generally outline our understanding of the scope of

legislation, deeds, agreements, etc., forwarded to us with the questions then propounded.

In response to your first question it is our understanding that the legal effect of the materials heretofore mentioned is primarily to establish that the real property comprising the International Peace Gardens in this state is to be used and maintained as an International Peace Garden in effect by the State of North Dakota (see for example subsection 2 of section 55-05-02 of the North Dakota Century Code) and that the State Historical Board of the State of North Dakota shall have general supervision of the lands thus included for the purpose of seeing that the terms of chapter 55-05 are complied with by the International Peace Garden, Incorporated, (see for example subsection 7 of section 5-05-02 of the 1969 Supplement to the North Dakota Century Code). On such basis the State Historical Board would have responsibility within the limits of the trust purpose for supervision of construction of any buildings constructed upon such lands in this state regardless of the source of the funds from which such construction was undertaken. Considering the financial structure of the state government in instances where funds have been appropriated by the State Legislature, for such purpose the State Historical Board would have additional responsibilities to see that the funds are expended, drawing the necessary papers for obtaining the necessary orders upon the state treasury for the payment of such funds, etc. Additionally, we would assume that where the legislative appropriation act specifies a particular project and objective for the utilization of funds appropriated, the State Historical Board would be responsible to see that the funds were expended for such purpose. Thus, for example, we note that chapter 71 of the 1967 Session Laws appropriates \$65,000 or so much thereof as may be necessary for the purpose of constructing an administration building at the International Peace Garden music camp. On the basis of such enactment it would appear that the supervising agency would be required, in effect, not only to see that the funds were expended for purposes within the basic International Peace Garden trust purposes, but would be further responsible to orient such expenditures and buildings towards the specific objective of such act, i. e., an administration building at the International Peace Garden music camp.

In response to your second question you do not denominate in what respect sanitary facilities are inadequate. Generally speaking, sanitary facilities should properly be adequate for the primary purposes of the trust imposed, i. e., maintenance of an International Peace Garden. In like manner, buildings previously erected and water supply, sewage and utilities serving such buildings should be adequate for this primary purpose. Noting the context of the basic statutory law we would assume that in the usual instance such responsibility would be primarily orientated towards exerting a supervisory authority with regard to International Peace Garden Incorporated's activities in this line. However, we do not in chapter 4 of the 1969 Session Laws, the basic historical board appropriation for this biennium, the item: "Grant for maintenance and operation of International Peace Garden, \$75,000" from which basis it is possible to arrive at the conclusion that the Legislative Assembly actually authorized a specific expenditure for this purpose from state funds.

In response to your third question, we would define the statutory responsibilities imposed upon the State Historical Board by subsections 4, 6, and 7 of section 55-05-02 of the North Dakota Century Code as amended to date in precisely the terms of those statutory provisions. WE cannot legislate on which basis we can neither add to, take away from or modify the terms of the legislation the Legislative Assembly has chosen to adopt. Looking to the chapter as a whole and the other documentation we have examined in this regard it would appear to us basically, that the State of North Dakota is the trustee of an active, express trust in regard to the International Peace Garden, Incorporated, that in many instances the state of North Dakota, as such trustee speaking through its Legislative Assembly has generally delegated the responsibilities of supervision of such trust to its State Historical Board, though in specific instances such Legislative Assembly has gone a bit beyond the basic structure of the trust, and by specific appropriation acts, has taken direct action with regard to particular matters.

In response to your fourth question, we note that your letter gives no specific information as to the specific source of moneys with which the automobiles in question were purchased. We would presume at least, however, that they were purchased with funds appropriated to the State Historical Board and possibly with funds specifically granted for maintenance and operation of International Peace Garden to the State Historical Society. Subsection 7 of section 55-05-02 of the 1969 Supplement to the North Dakota Century Code does appear basically to require the State Historical Board to have only supervisory responsibilities with regard to the International Peace Garden Project, though we note also the mention therein of the purpose of "cooperating" with the corporate entity. To the extent such vehicles are owned by the state and more specifically the State Historical Board, such vehicles must necessarily be retained and cared for to the same extent as other state property. Looking to the basic materials heretofore mentioned, as to responsibilities of State Historical Board in maintenance and operation of this project, expenditures from general State Historical Board funds orientated towards actual maintenance of the International Peace Garden, though paid for expenses of these vehicles may be very questionable. On the other hand, we again note the "Grant for maintenance and operation of International Peace Garden, \$75,000." Assuming the expenses of operation of these vehicles were paid from this grant, we would see no impropriety in such automobiles being operated by employees of the International Peace Garden for maintenance of the garden both in Canada and the United States, particularly if such automobiles were purchased from a similar item or appropriation.

In response to your fifth question we at least tentatively assume that you refer to a transfer of title evidenced by documentation filed with the Registrar of Motor Vehicles. The state itself cannot make a gift of these automobiles or other property except for the reasonable support of the poor. The funds of the State Historical Board and properties purchased therewith must necessarily be devoted to the objectives for which they were appropriated. If the automobiles were purchased from an appropriation for maintenance and operation of the International Peace Garden, we would assume that the Legislative Assembly has previously determined such purchases to be

an expenditure orientated towards a public objective of establishing and maintaining an International Peace Garden Project.

We note that the last sentence of section 55-01-02 of the 1969 Supplement to the North Dakota Century Code provides:

"* * * The board, however, shall not sell, mortgage, transfer, or dispose of any of its collections or property except as authorized by law, nor shall it, without authority of law, remove from the historical rooms in the capitol any article contained therein."

Section 55-01-10 of the 1969 Supplement to the North Dakota Century Code provides for exchange of lands with other divisions of state government, section 55-02-02 of the 1969 Supplement to the North Dakota Century Code provides for transfer of property from State Historical Society to North Dakota Park Service and section 55-02-05 of the 1969 Supplement to the North Dakota Century Code provides for contracting supervision and maintenance with other divisions of federal and state governments. While International Peace Gardens, Incorporated, may well serve to some extent as a governmental agency in some limited aspects, we must recognize that primarily it is a private corporation, not a governmental entity or division of government. The State Historical Board as such is given no general authority to transfer title to personal property and the specific statutes with regard to transfers of personal property do not appear to fit the situation here involved.

Section 15-61-05 of the 1969 Supplement to the North Dakota Century Code does authorize the disposition or exchange of state surplus property by the director of the Department of Accounts and Purchases. If these automobiles are in fact surplus to the needs of the State Historical Board, we would assume that the procedures therein set out could be utilized for such purpose. We do not believe the provisions of subsection 1 of said section 15-61-05 would be applicable to a transfer of these automobiles to the International Peace Garden Corporation without consideration, as it is rather a private corporation, in this respect no different than any other private entity contracting with the state government. On such basis we would assume that title could be transferred to this corporate entity, only under the provisions of subsection 2 of said section 15-61-05, if such corporate entity were the successful bidder, or negotiator with regard to same.

We trust that the within and foregoing will be sufficient for your purposes.

HELGI JOHANNESON

Attorney General