

**OPINION
71-28**

January 19, 1971 (OPINION)

Mr. H. L. Thorndahl

President

The Bank of North Dakota

RE: Bank of North Dakota - Judge Christianson Project - Sale

This is in response to your letter in which you set forth that the Bank of North Dakota administers the Judge A. M. Christianson project which has assets of approximately \$650,000 consisting of several tracts of land in the vicinity of Burlington, North Dakota, contracts for deed on about twenty of the pieces of land in that area, cash, farm home administration loans, and certificates of deposit.

You further state that it appears to you that it would be good business practice to have all of these assets sold to the Bank of North Dakota and the cash resulting therefrom delivered to the state for other uses. You then ask whether or not the state could dispose of this project or if it is a continuing trust and must be kept intact. To resolve the question, it is necessary to review the basic facts which must be taken into account.

The North Dakota Rural Rehabilitation Corporation was organized on October 25, 1934, as a nonprofit charitable corporation. The Articles of Incorporation were filed with the Secretary of State on the same date. Its principal place of business was designated as Bismarck, North Dakota.

Its purposes and objectives among other things contain the following:

- a) to rehabilitate individuals and families as self-sustaining human beings by enabling them to secure subsistence and gainful employment from the soil, from coordinate and affiliated industries and enterprises and activities and otherwise, in accordance with economic and social standards of good citizenship,"

It also authorized the corporation to buy, acquire by gifts, or any other means, real and personal property and to hold sale and mortgage as the occasion arose. It also authorized the corporation to assist any subsidiary corporation. It specifically provided for:

- k) to act as an agency for the state of North Dakota and for any county, city, village, or township therein and/or any other public or private body or organization in any relief or welfare activity,"

The articles also contained the following:

SIXTH: The corporation shall have a perpetual existence unless dissolved in accordance with law, in which event its property

shall be sold and disposed of, its debts paid and collected, its affairs properly settled, and the balance of funds on hand shall be turned over to the State Treasurer of the State of North Dakota and shall be subject to appropriation by the Legislative Assembly of the State of North Dakota for such public purposes as the members of the corporation may direct; provided that the members of the corporation, if they so desire, may direct that such funds shall become a part of the general fund or of any other special fund of the State of North Dakota."

The foregoing constitute the basic purposes and concepts of the corporation as set forth in the Articles of Corporation which have not been changed from the date they were filed with the Secretary of State (at least there is no record to the contrary in the office of the Secretary of State).

Chapter 224 (1935 Session Laws) among other things provided that the state officers and agencies were authorized to cooperate with and utilize the facilities of the North Dakota Rehabilitation Corporation. It further exempted all funds and property received by the corporation for rehabilitation purposes from taxation. The act further provides that the state of North Dakota accepts the offer made that any funds or property on hand upon dissolution of the corporation shall be turned over to the state treasurer for appropriation by the Legislative Assembly for such public purposes as may be designated.

We are not making any comment specifically as to whether or not this legislation would violate Section 69 of the North Dakota Constitution as being a special law.

Joint Resolution I, 1937 Session, provided that the North Dakota Rural Rehabilitation Corporation be authorized to bargain, sell, convey, transfer, or assign to the United States of American any or all of its assets or property provided further that such transfer or assignment shall be accepted by the United States subject to all liabilities, commitments, obligations, etc., and any funds realized be held by the treasurer of the United States as a trust fund and be available as a revolving fund for rural rehabilitation purposes in the state of North Dakota. It further provided that should the United States cease to carry on a rural rehabilitation program in the state of North Dakota, the remainder of the assets would be transferred back to the corporation if it is still in existence, and, if not, to be turned over to the state of North Dakota for such disposition as the members of the corporation may have directed prior to the dissolution of the corporation, but in the event no provision was made for the disposition of the property prior to dissolution, then the property shall be subject to disposition for such public purposes as the Legislative Assembly may designate.

This resolution also recognized that the administration of the affairs had been vested in several federal agencies and ultimately wound up in the office of Secretary of Agriculture.

Presumably, such program was carried on by the federal government until 1946 when Congress passed Public Law 436 Seventy-ninth

Congress, Chapter 468 Second Session, S 1336 which was approved June 24, 1946, and is incorporated in the resolution of the Industrial Commission adopted on September 7, 1946.

The following documents and acts are attached hereto for reference: Chapter 224 (1935 Session Laws), Joint Resolution * 1937 Session, Industrial Commission Resolution dated September 7, 1946, Pub. L. 436 - Seventy-ninth Congress, Chapter 468 Second Session, opinion of Attorney General Leslie Burgum dated January 14, 1958, addressed to Theodore W. Sette.

None of these documents spell out a permanent trust. The documents recognize certain purposes, and the transfer and acceptance are made with those purposes in mind. The documents also indicate, particularly the inception of the program and the federal act, that support to the project will be given and will be recognized so long as the government is able to support the program and that aid for the project or program is available.

The abstracts of the property involved do not indicate that the transfers or grants were made with a trust condition attached, either temporary or perpetual. Nor are the lands or properties in question imposed with a perpetual trust by the laws and resolution relating to same.

The title of the property is now in the state of North Dakota under the management, supervision and responsibility of the Industrial Commission (see opinion of Attorney General Leslie Burgum dated 1958) subject to certain interests of individuals who hold leases or its equivalent.

After having considered all of the pertinent items, it is our opinion that the Legislature of this state is in a position to determine whether or not the needs and purposes for which the initial property was acquired have been accomplished and whether or not the need still exists. If the Legislature is of the opinion that the need no longer exists and that the property is no longer needed to accomplish the purpose for which the property was acquired and that it will be a burden to continue the program, it may enact legislation for the disposition of the property and determine the use of the proceeds received from such disposition.

HELGI JOHANNESON

Attorney General