

**OPINION
71-21**

June 18, 1971 (OPINION)

Mr. Norman L. Peterson, Director
Division of Water Supply and Pollution Control
State Department of Health

RE: Bank of North Dakota - Municipal Sewage Projects - Financing

This is in reply to your letter of June 17, 1971, with regard to a program involving use of funds from the Bank of North Dakota in construction of municipal sewage treatment facilities.

Your question is stated as:

Does the Bank of North Dakota, as a State Agency, have the legal authority to put money into municipal waste treatment facilities."

The Bank of North Dakota is perhaps an unusual entity for a state government. While, of course, we are completely familiar with its operations, some brief explanation of its basic nature might be of assistance to all persons that may be involved in such matters.

Section 6-09-01 of the North Dakota Century Code provides:

PURPOSE AND ESTABLISHMENT OF BANK OF NORTH DAKOTA. For the purpose of encouraging and promoting agriculture, commerce, and industry, the state of North Dakota shall engage in the business of banking, and for that purpose shall maintain a system of banking owned, controlled, and operated by it, under the name of the Bank of North Dakota."

In further explanation we might mention the provisions of Section 6-09-02 of the North Dakota Century Code providing that:

INDUSTRIAL COMMISSION TO OPERATE BANK BUSINESS OF BANK. The Industrial Commission shall operate, manage, and control the Bank of North Dakota, locate and maintain its places of business, of which the principal place shall be within the state, and make and enforce orders, rules, regulations, and bylaws for the transaction of its business. The business of the Bank, in addition to other matters specified in this chapter, may include anything that any bank lawfully may do, except as it is restricted by the provisions of this chapter. This provision shall not be held in any way to limit or qualify either the powers of the Industrial Commission granted by nor the functions or said Bank as defined in this chapter."

The "Industrial Commission" is, of course, made up of the governor, the attorney general and the commissioner of agriculture of the state. (See Section 54-17-02 of the 1969 Supplement to the North Dakota Century Code.) While "Bank of North Dakota's" operating funds (salaries, wages, fees, services, etc.) are biennially appropriated by the Legislative Assembly (see example Chapter 20 of the 1969

Session Laws) its funds for the type of transactions here considered are constitutionally appropriated (see Section 186 of the North Dakota Century Code). While it, of course, cannot violate the provisions of Section 185 of the North Dakota Constitution by "donations" to political subdivisions, municipalities, etc., part of its constitutionally appropriated funds have long been used and we presume will continue to be used in the financing of various municipal and political subdivision improvement projects including, of course, municipal sewage treatment facilities pursuant to such statutory provisions as Sections 6-09-15 and 21-03-20 of the North Dakota Century Code.

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

HELGI JOHANNESON

Attorney General