

OPINION
71- 338

April 1, 1971 (OPINION)

Mr. David L. O'Brien
Director
North Dakota Park Service

RE: State - Park Service - Disposition of Gift

This is in reply to your letter of March 15, 1971, with regard to a gift made to the North Dakota Park Service and disposition of same.

You inform us that a named individual presented to the Park Service a dedicated gift of shares of stock in corporate entities. You indicate that, as a result of a corporate transaction involving one of the companies whose stock was given and the rising stock market, you wish to convert the stock into cash so that you might proceed with the intent of the gift.

You indicate that because of existing stock regulations you need a letter from our office stating that as director of the Park Service you have authority to sell the stock having the money deposited into your state account.

Looking to correspondence in the file, I note the suggestion from the donor of the gift that you sell them, let him know how much you realize from them, and he will make up the difference to bring the amount to \$5,000.00. We note a great deal of interest shown in the correspondence as to the development of an "arboretum"; though insofar as your inquiry does not relate to same, we express no opinion at this time as to whether the proceeds of same must be used for the purposes of the arboretum.

Chapter 55-08 of the 1969 Supplement to the North Dakota Century Code contains statutes establishing the entity known as the North Dakota Park Service. While not necessarily a corporate entity of itself, it is clearly an agency or subdivision of the corporate entity, the State of North Dakota. A part of that chapter, section 55-08-03, provides in part:

"DUTIES - POWERS - LIMITATIONS. The director of the state parks shall be the administrative and executive head of the service. Subject to the provisions hereof and other applicable laws, he shall have the following powers and duties:

1. The director and his authorized agents and employees shall have charge and control * * * use, sale, leasing and disposition of facilities and of all records pertaining to the performance of his functions relating thereto.

* * *

3. The director may accept in behalf of the state all gifts or grants or lands or personal property tendered to the state for any purpose pertaining to the activities of the North

Dakota park service.

* * *

7. The director of state parks * * * may accept gifts or grants of money or property from the United States or any source for such projects, may use and apply any money or property so received in accordance with the terms of the gift or grant so far as is not inconsistent with the provisions of this chapter * * *."

Looking into the purposes and terms of the gift and heretofore quoted statutory provisions, it is our opinion the director of the North Dakota Park Service is the officer of the State of North Dakota authorized and empowered to transfer, convert, endorse, sell, assign, set over and deliver these share of stock now standing in the name of the North Dakota Park Service and to make, execute and deliver any and all written instruments of assignment and transfer necessary or proper to effectuate the authority granted by such statutory provisions.

We are assuming, of course, that the director of the North Dakota Park Service will be acting herein only through a duly licensed stockbroker, not acting as a securities salesman in his own right. The disposition will not be handled by the director of Accounts and Purchases pursuant to section 15-61-05 of the 1969 Supplement to the North Dakota Century Code as the property concerned is not "surplus" within the meaning of that statute, and the transaction here concerned is merely a part of the administrative process of acceptance of a gift.

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

HELGI JOHANNESON

Attorney General