

**OPINION
62-164**

November 28, 1962 (OPINION)

MISSOURI BASIN SYSTEMS GROUP POOLING

RE: Authority and Limitations of Board of Administration and Board of Higher Education to Participate

This is in reply to your letter of November 13, 1962, concerning the participation by the Board of Administration and the Board of Higher Education in the Missouri Basin Systems Group Pooling.

Without going into detail in regard to the purpose of this Pooling Agreement, we make the following observations:

1. The Board of Administration and the Board of Higher Education have the right and duty to provide electric power to the institutions under their control and supervision.
2. The property used at these institutions remains the property of the State of North Dakota.
3. Those parties participating in the pooling agreement may withdraw upon one year notice to the other participating groups.
4. The participating groups agree to contribute, in proportion to their respective total firm demand on the Joint Transmission System to the reasonable fund and personnel or personnel-time requirements of the Missouri Basin Systems Group and its committees. Cash contributions are not to exceed ten cents per kilowatt of the peak annual firm demand.
5. The recommendations of the coordinating bodies as to the construction or installation of generating or transmission facilities may be refused by a participating system.
6. Ownership of facilities in the Joint Transmission System remains with the original owners.
7. Participating systems that utilize the Joint Transmission System share the total annual cost of the System by payments determined on an annual unit cost basis, beginning with the date of use, such determinations to be reexamined and revised as appropriate at three-year intervals.

While these observations do not include all the pertinent matters contained in the proposed Pooling Agreement, we believe they do constitute some of the more important points insofar as this opinion is concerned.

We do not believe the Legislature contemplated participation by the two boards in question in such a comprehensive plan. However, in view of the rapid development of electrical power facilities we believe the statutes granting the boards the power to provide electrical power to the institutions under their control can be construed to authorize participation by the board in a Pooling Agreement which should have the effect of obtaining better and perhaps more economical electric power. We must also be aware, however, of certain provisions in the Pooling Agreement which are not in complete accord with the powers granted to the boards above mentioned. We note for instance that the participating groups may withdraw from the agreement on one year's notice. It is generally accepted that any governing body does not have the authority to bind future governing bodies unless such authority is specifically granted. We also note that the participating groups would be required to contribute cash and personnel. We presume no appropriation for such purpose has been made by the Legislature and therefor this could create a problem insofar as finances are concerned for this project.

Perhaps one of the most serious questions arises with regard to the use of other groups of the facilities owned by the State of North Dakota. We can find no specific authorization for such action by the boards in question. While such possibility may never occur, it is apparently possible under the terms of the Pooling Agreement.

In view of the fact there are some provisions of the Pooling Agreement which are questionable in the face of the North Dakota law and in view of the fact the Legislature is meeting in the immediate future, we deem it advisable that this matter be presented to the Legislature for their consideration. If participation by the Board of Administration and the Board of Higher Education in the Missouri Basin Systems Group Pooling Agreement along with the necessary appropriation therefor is approved by the Legislature, the part North Dakota may take in such agreement will then be clearly delineated.

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