

OPINION
63-239

September 26, 1963 (OPINION)

STATE HISTORICAL SOCIETY

RE: State Funds - Control of When Statutory Authority Present

This is in reply to your letter dated September 4, 1963, in regard to status of the State Historical Society with particular regard to amendments to chapter 55-01 of the North Dakota Century Code, now contained in the 1963 Pocket Supplement to the North Dakota Century Code, to disposition of funds and to organizational matters.

Your questions are stated specifically as:

Kindly advise whether or not these funds shall be turned over to the State Treasurer. Can the present Board of Directors expend monies from these accounts? What is the relationship of the existing membership to its new Board?"

Would it be possible for the new Board of Directors to come up with a new set of by-laws to fit the changed situation and propose them to the membership at a meeting to be held shortly after the first of the year?"

You further inform us that the present by-laws are absolutely incompatible with the new law. You state that someone has raised the point that possibly the law itself was unconstitutional because the membership itself was never consulted about the change in status.

We note in the audit report statements as follows:

"SCHEDULE 1

STATE HISTORICAL SOCIETY

LEGAL STATUS

Charter issued March 8, 1895 under the Provisions of Chapter 3,
Compiled Laws of 1887

to

NORTH DAKOTA HISTORICAL SOCIETY

Articles of Incorporation amended August 13, 1903 to change
name to

STATE HISTORICAL SOCIETY OF NORTH DAKOTA

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Excerpt from manual for the State of North Dakota 1930; page 52

'A private organization which under an Act of the 1905 Legislative Assembly was given a legal status and work thereby coordinated with that of other State Departments.'

We might first point out that the State of North Dakota has long been closely connected with the State Historical Society. Thus in Chapter 3, Article 11 of the 1895 Revised Code of the State of North Dakota provision was made for a State Historical Commission, having the president of the North Dakota Historical Society as a member and having a room in the Capitol building for use of such Historical Commission and for the North Dakota Historical Society when cooperating with it.

By 1913 further reference is not made to the Historical Commission but specific statutory provisions relate to the State Historical Society imposing duties upon it, making certain enumerated state officers ex officio members of its board of directors, making appropriations directly to such society, etc. (See: Article 10, Chapter 5 of the 1913 Compiled Laws). We further note that said Chapter 5 is entitled "Public Boards" and includes such matters as Board of University and School Lands, State Auditing Board, State Board of Dental Examiners and similar boards.

We note that from 1913 to the current date the statutes provide directly for use of state money by the society, impose particular duties and responsibilities upon it, etc. The most substantial change of the 1963 legislation has been, as indicated in your letter, provision for the appointment by the Governor with the consent of the Senate of nine members of the State Historical Society Board of Directors. You inform us that prior to this law, the Board of Directors was chosen by the membership itself.

You further inform us that the present by-laws of the State Historical Society of North Dakota are absolutely incompatible with the new law. You state that someone has raised the point that possibly the law itself was unconstitutional because the membership itself was never consulted about the change in status.

We assume that by special funds listed by the auditor in the rear section of his audit report you are referring to the section of that report entitled:

"UNDER PRIOR BOARD ADMINISTRATION

JUNE 30, 1963

MEMBERSHIP DUES AND PUBLICATIONS

SEPARATE BANK ACCOUNTS

and

VARIOUS TRUST FUNDS

PERTAINING TO STATE HISTORICAL SOCIETY"

In the first instance we might state that up to and including the current amendment of the statutes, there would appear to be a separate duly organized State Historical Society, corporate in nature and apparently having an existence apart from any existence, as an agency of the state government. While the state government has been closely associated with such corporate entity, it would appear that the corporate entity has maintained its status as a separate, independent entity.

We note the provisions of Section 131 of the North Dakota Constitution as follows:

Section 131. No charter of incorporation shall be granted, changed or amended by special law, except in the case of such municipal, charitable, educational, penal or reformatory corporations as may be under the control of the state; but the legislative assembly shall provide by general laws for the organization of all corporations hereafter to be created, and any such law, so passed, shall be subject to future repeal or alteration."

We do not mean to suggest that the legislature of this state cannot create additional corporate or noncorporate entities to assume any of the functions of state government.

Applying this to the amendment to section 55-01-01 of the North Dakota Century Code, we find that the Legislature has provided that there shall be a "state historical society of North Dakota." The governor appoints a nine-member board of directors of the legislatively created "State Historical Society of North Dakota." Construing the qualification for membership on such board of directors in accordance with the current situation as of the date of enactment of this statutory provision, it would appear that such members of the board of directors shall have been members of the previous corporate entity, State Historical Society, for three years immediately previous to the appointment. On such basis we do not see that this would have the effect of destroying the prior corporate entity, State Historical Society of North Dakota, or of amending or changing its by-laws or articles of incorporation. It might be deemed advisable by the members of the prior corporate entity society to amend their by-laws and/or articles of incorporation to enable them to work more closely with the board of directors appointed by statute to the legislatively declared and created "State Historical Society of North Dakota." We know of no legal objection to having what you refer to as "the new Board of Directors" coming up with a new set of by-laws to fit the changed situation and proposing them to the membership of the prior corporate entity, State Historical Society of North Dakota, at a meeting to be held shortly after the first of the year.

As to handling of funds we are enclosing herewith a copy of an opinion of this office to Mr. Ralph Dewing, Director, Department of Accounts and Purchases, dated September 13, 1963, which does give a basic outline of applicable principles. Applying same to the current situation and going through the items as listed in the auditor's report under the section headings previously referred to acting solely on the basis of the information therein given, the following

would be our conclusions.

The item membership dues and publications account would appear to be funds raised from the private membership of the prior corporate entity, State Historical Society, without regard to its work or appropriations on behalf of the State of North Dakota. On such basis, we do not believe that same would come under the jurisdiction of state officers, nor be subject to the board of directors appointed pursuant to section 55-01-01 of the 1963 Supplement to the North Dakota Century Code in the absence of affirmative action by the prior corporate entity, State Historical Society of the State of North Dakota.

The item, I N V E S T M E N T - Membership dues and publications account, savings account, indicates that the deputy auditor does not view this as a Trust Fund but as an integral part of the "Membership Dues and Publications Account." Solely on the basis of this conclusion we would assume that same is in the same position as the item considered in the paragraph immediately preceding.

The item, Seventh U.S. Cavalry-Custer Memorial Association Trust Fund, c/o State Historical Society, assuming same to be deeded or granted to the State Historical Society of the State of North Dakota, the prior corporate entity, to be held in trust for particular purposes, would remain under the jurisdiction of the prior corporate entity.

The item, Pioneer Daughters-Trust Fund, c/o State Historical Society, should be treated in a like manner.

The item, Farrell Publication Trust Fund Savings Account, assuming it is similarly raised and similarly placed in trust, would be treated in the same manner.

The above conclusions are based primarily on the assumption that such funds are raised by functions of the prior corporate entity, independent and separate from its functions on behalf of the State of North Dakota, or supported by the State of North Dakota. We are assuming that same have been accumulated by the corporate functions of the entity, not dependent solely on the powers granted and duties imposed by sections 55-01-02 and 55-01-03 of the North Dakota Century Code and that same are not subject to or created by activities based entirely on sections 55-01-04, 55-01-05, 55-01-06 of the North Dakota Century Code.

Going further back in the auditor's report we find item, "Inter- that entitled "Centennial Coins." We understand that such funds and property were created as a result of the commission appointed pursuant to Senate Concurrent Resolution K-K 1959 Session Laws, using funds appropriated pursuant to Chapter 85 of the 1961 Session Laws. On such basis, we believe that same should be properly handled as public moneys, and cash proceeds turned into the State Treasury as a special fund.

Going further back in the auditor's report we find item, "International Music Camp Building Special Appropriation, Chapter 87, 1961 S.L." Considering the source of such funds we believe they

properly should be held as public moneys in the State Treasury.

All other funds listed appear to be based on state appropriations, therefore, we believe there is no question as to their being "public moneys" and properly held in the State Treasury.

On the basis of the within and foregoing, it is our opinion that the Board of Directors of the state entity or agency created pursuant to the 1963 amendments to section 55-01-01 of the North Dakota Century Code was intended to and does have control of the funds strictly designated as public moneys in the State Treasury, and may expend same subject only to the terms of the appropriations of same. It is further our opinion that same does not have control of and jurisdiction over moneys not so designated.

We might again state at this point that the within and foregoing is based solely on facts contained in your letter and auditor's report. Additional information could, of course, change the conclusions stated therein.

HELGI JOHANNESON

Attorney General