

**OPINION
65-112**

November 18, 1965 (OPINION)

Mr. Walter R. Hjelle

Highway Commissioner

RE: Highways - Federal Aid - Authority of Commissioner

Receipt is herewith acknowledged of your request for an official opinion as to your authority and responsibility to take such steps as are necessary to continue North Dakota's eligibility for federal aid, without penalty, in view of the new requirements imposed by Congress under the Highway Beautification Act of 1965.

Section 24-04-01 of the North Dakota Century Code, provides in part that: "The Commissioner is authorized and empowered to make all contracts and to do all things necessary to cooperate with the United States government in the construction of roads under the provisions of the said Act or other act of Congress that hereafter may be enacted, including the Federal Aid Highway Act of 1950 regarding secondary roads.

We believe that the legislature of North Dakota, in adopting the above quoted statute, intended to grant you such powers as are necessary to comply with the requirements of Congress in order that no federal aid for highway purposes under the Federal Aid Highway Act, or any other Act relating to the construction of highways, be lost to the state of North Dakota during an interim between legislative sessions.

We therefore conclude that you have the authority to:

- (1) Prohibit the establishment of billboard advertising along interstate and primary highways in North Dakota;
- (2) Acquire the interest of billboard owners in existing billboards and the related rights of property owners along the primary highways of this state;
- (3) Provide for advertising where required within the highway right-of-way;
- (4) Prohibit the establishment of junkyards along interstate and primary highways;
- (5) Acquire existing junkyards where they cannot be effectively screened or provide for their removal and the payment of compensation therefor, along interstate and primary highways; and
- (6) Expend from the state highway fund such amounts as are necessary for the acquisition of lands for restoration, preservation, and enhancement of scenic beauty adjacent to interstate and primary highways, when reimbursed 100

percent from federal funds.

It is our opinion that any action taken by you for the general welfare, to exercise police powers to prohibit the establishment of billboards and junkyards along interstate and primary highways, as required by the Highway Beautification Act of 1965, should be accomplished by the promulgation of administrative rules and regulations under the Administrative Practices Act, approved by this office and filed with the Secretary of the Bar Association and the Clerk of District Court in each county.

The legislature of North Dakota indicated that a state highway system that is adequate in all respects is essential to the general welfare of the state of North Dakota and that they intended to grant to you sufficiently broad authority to enable you to function adequately and efficiently in all areas of appropriate jurisdiction with specific details to be determined by reasonable rules and regulations promulgated by you. Such legislative intent is expressed in section 24-01-01 of the North Dakota Century Code.

Because some of the actions required by Congress, stated by Congress to be in the public interest, are in areas which have not been specifically considered by the legislature, it is recommended that the next legislative assembly be requested to consider these matters and to make more specific disposition of these matters.

HELGI JOHANNESON

Attorney General