

**OPINION**  
**65-261**

April 19, 1965 (OPINION)

Mr. Kenneth E. Raschke

Commissioner

Higher Education

RE: Schools - Higher Education - Revenue Bonds for Parking Lots

This is in reply to your letter of April 13, 1965, in which you set forth the following facts and requests:

At the last meeting of the Board of Higher Education, the University of North Dakota requested permission to proceed with a bond issue of \$300,000 for the construction of parking lots. House Bill 577 as passed by the recent Legislative Assembly included an item for parking lots. However, the original enabling legislation permitting the issuance of revenue bonds gives no specific authority for this type of construction.

We would appreciate the opinion of your office as to whether revenue bonds for the purpose of constructing parking lots can legally be issued by the Board of Higher Education under existing law."

The issuance of bonds for the construction of revenue producing projects is governed by Chapter 15-55 of the North Dakota Century Code, as amended. Section 15-55-01 of the North Dakota Century Code provides:

BOARD OF HIGHER EDUCATION MAY SET ASIDE PORTIONS OF CAMPUSES FOR AUTHORIZED REVENUE PRODUCING BUILDINGS. - Subject to and in accordance with the terms of this chapter, the state board of higher education, for and on behalf of the several institutions now and hereafter under its supervision and control, from time to time, may set aside such portions of the respective campuses of said institutions as may be necessary and suitable for the construction thereon of such revenue producing buildings as, from time to time, may be authorized by the legislative assembly of the State of North Dakota, and including additions to existing buildings used for such purposes, and may construct such buildings or additions thereon and may equip, furnish, maintain and operate such buildings." (Emphasis supplied.)

The subsequent sections of the Act refer specifically to the construction of such revenue producing buildings as are authorized by the Legislature. The question is, of course, whether a parking lot can be constructed under the provisions of this chapter since the chapter refers to buildings, additions to existing buildings, and the equipment and furnishing thereof.

House Bill 577, as enacted by the 1965 Legislative Assembly, does, in accordance with the provisions of Chapter 15-55, set forth the revenue producing projects which the Board of Higher Education is authorized to construct under the provisions thereof. These projects include parking lots for certain of the institutions of higher education as provided in the bill.

There appears to be no question but that parking lots would be revenue producing in such amounts as to retire the bonds issued to construct same and we presume that this is the type of project the University and the Board has in mind. Since the projects are revenue producing, it would appear there would be no reason why the Legislature could not authorize the issuance of bonds for the construction of revenue producing parking lots as well as revenue producing buildings. It is the intent of the Legislature which must govern in this matter.

We have serious doubts that the word "building" as used in a statute would include "parking lots" in the absence of any other legislative indication to the contrary. In this instance there is an abundantly clear indication to the contrary.

We realize that amendment and repeal of existing statutes by implication are not favored in law. However, where the intent of the Legislature is obvious, the Courts have recognized the implied amendment or repeal of existing laws by the enactment of a statute which directly affects such laws.

In the case of House Bill 577, the Legislature has used the term "revenue producing buildings" in the title of the bill and in Sections 1 and 2 of the bill. Thus Section 1 of the bill provides: "In accordance with the provisions of Chapter 15-55 of the North Dakota Century Code, the state board of higher education is hereby authorized and empowered to issue and sell tax-exempt bonds for the purpose of constructing or purchasing revenue-producing buildings at institutions of higher learning in this state under the jurisdiction of the board, at such maximum amounts, at such locations, and for such purposes as is hereinafter provided." (Emphasis supplied) Section 1 of the bill also very specifically sets forth authorization for the Board to construct "parking lots" and "parking lots and access drives" at various institutions of higher learning enumerated therein. There is no doubt but that the Legislature intended the Board to have authority to construct, under the provisions of Chapter 15-55, revenue producing parking lots as well as the other buildings enumerated in House Bill 577. Section 15-55-01 of the North Dakota Century Code, quoted above, and Section 15-55-10 of the North Dakota Century Code, as amended (limiting the "building or buildings" to be erected under Chapter 15-55 to those specified "buildings" as may, from time to time, be authorized by legislative act), also clearly indicate the intent of the Legislature that it have the final determination as to the revenue producing projects which are to be constructed at the various institutions of higher learning under the control of the Board.

We believe the Legislature, in giving the Board the authorization to construct revenue producing "parking lots" under the provisions of

Chapter 15-55 has impliedly amended the provisions of Chapter 15-55 of the North Dakota Century Code, as amended, to include revenue producing "parking lots and access drives" within the revenue producing projects which may be constructed thereunder.

House Bill 577 becomes effective July 1, 1965. it is our opinion that the Board of Higher Education may legally issue revenue bonds for the purpose of constructing revenue producing parking lots as specified in House Bill 577 subsequent to that date.

HELGI JOHANNESON

Attorney General