

OPINION
65-3

June 17, 1965 (OPINION)

THE HONORABLE WILLIAM L. GUY

Governor

RE: Agriculture - Potato Development Commission - Unconstitutional

This is in reply to your letter of June 14, 1965, in which you set forth the following facts and question:

"The North Dakota Potato Development Commission is under Chapter 4-10A of the North Dakota Century Code. The terms of three members of this Commission will expire July 1, 1965.

"In view of the North Dakota State Supreme Court ruling in Case Number 8134 filed February 22, 1965, I am requesting that your office inform me as to (1) whether the North Dakota Potato Development Commission is still a legal entity, and (2) whether it would be proper to make three appointments or reappointments to this Commission as of July 1, 1965."

The provision for appointment of members to the North Dakota Potato Development Commission is, as you have noted in your letter, found in Section 4-10A-05 of the North Dakota Century Code. This section provides:

"POTATO DEVELOPMENT COMMISSION. The governor shall appoint a commission to be known as the North Dakota potato development commission, to consist of three members, one of whom shall, at the time of his appointment, be the president of the North Dakota Certified Seed Potato Growers' Association, and one of whom shall, at the time of his appointment, be either the president or the vice-president of the Red River Valley Potato Growers' Association. The term of office of the members of the commission shall be one year from and after the first day of July in each year."

The case to which you refer in your letter is Scott v. Donnelly, 133 N.W.2d. 418 (1965). In that case the plaintiff challenged the constitutionality of Chapter 4-10A of the North Dakota Century Code and the various sections thereof. We see no reason to go into the basis of the decision for the purpose of this opinion. However, we would note the language of the Court on Page 246 of the reported decision:

" * * *The functioning of the North Dakota Potato Development Commission is wholly dependent upon the revenue supplied by the unconstitutional tax. We are impelled to hold that Chapter 4-10A, N.D.C.C., is unconstitutional and void, for the reasons stated. Since we have decided that the entire Act must fall, we pretermit discussion of the challenges to the constitutionality of other specific sections."

Section 4-10A-05 is, of course, a part of Chapter 4-10A of the North Dakota Century Code. Since the Supreme Court has declared all of Chapter 4-10A to be unconstitutional and void, this necessarily includes Section 4-10A-05.

In view of the decision of the North Dakota Supreme Court in *Scott v. Donnelly*, supra, it is our opinion that the North Dakota Potato Development Commission is not a legal entity; it is our further opinion it would not be proper to make three appointments or reappointments to this Commission as of July 1, 1965.

HELGI JOHANNESON

Attorney General