

**OPINION**  
**65-314**

July 12, 1965        (OPINION)

Mr. Clarence M. Maesner

Coordinator

State Outdoor Recreation Agency

RE: State Outdoor Recreation Agency - Authority

This is in reply to your letter of July 7, 1965, in which you request our opinion indictating whether North Dakota has the necessary legal authority to participate in the Land and Water Conservation Fund Act Program. With your letter you enclose a copy of a letter from Mr. W.W. Dresskell, Regional Director, United States Department of the Interior, Bureau of Outdoor Recreation, Mid-Continent Region, Building 56, Denver Federal Center, Denver, Colorado, dated July 2, 1965, which sets forth the legal authorities necessary to be lodged in some state agency or agencies for full participation by the state in the Land and Water Conservation Fund. These authorities, as listed in Mr. Dresskell's letter, are as follows:

1. To prepare and maintain a Comprehensive State Outdoor Recreation Plan;
2. To develop, operate, and maintain outdoor recreation areas and facilities;
3. To acquire land, waters, and interests in land and waters for recreation purposes;
4. To enter into contracts and agreements with the United States and an appropriate agency thereof;
5. To keep financial and other records relative to such contracts and agreements;
6. To furnish appropriate officials of the United States such reports and information as are required for the conduct of the grant program;
7. To coordinate its recreation activities with those of other state agencies and governmental units;
8. To receive federal moneys;
9. To disburse federal moneys;
0. To assure the United States that the state has the ability and intention to finance its share of any project proposed;
1. To assure that areas acquired or developed with money

granted from the fund will be operated and maintained for public recreation purposes;

2. To enter into agreements on behalf of political subdivisions and public agencies, and to require from such entities the necessary financial and other assurances."

The North Dakota Outdoor Recreation Agency was created by Senate Bill No. 51 and enacted by the 1965 Legislative Assembly as an emergency measure. It was approved by the governor on March 6, 1965. Section 1 of the bill provides in part:

\* \* \*The agency shall serve as the focal point within the state for the many activities related to outdoor recreation. Its principal function shall be that of planning and coordinating agency for the related programs on all governmental levels, encouraging the full development of existing and future acquisition of outdoor recreation areas. The agency, without limiting the generality thereof, shall be vested with the power, authority, duty, and general jurisdiction to:

1. Undertake the development of broad recreation policies for the state as a whole and a long-range plan for their implementation;
2. Initiate a continuing appraisal of the total state recreation resources, potentials, and needs and the adequacy of current efforts to meet the demands;
3. Provide for the coordination and appraisal of related programs administered by all levels of government and by private enterprise;
4. Cooperate with the United States or any appropriate agency thereof, particularly in connection with the distribution and use of federal aid funds which the state may become eligible to receive;
5. Encourage cooperation among public, voluntary, and commercial agencies and organizations; and
6. Apply for and receive federal grants-in-aid for recreation purposes. It shall approve their allocation to specific projects only after it has determined that sufficient funds, including those funds necessary for adequate maintenance, are and will be available from the state or political subdivisions as the case may be for meeting the state's share of project costs. If for any reason it shall become necessary for any department or agency of the state to expend state funds in order to fulfill any obligation of a political subdivision which it has agreed to perform in the construction or maintenance of such projects, the state shall have a claim against the subdivision for such money expended. All funds allocated to the state for recreation purposes shall be distributed to the departments, agencies, or political subdivisions entitled thereto; and

7. Keep financial and other records relating thereto, and furnish to appropriate officials and agencies of the United States and the state of North Dakota such reports and information as may be reasonably necessary to enable such officials and agencies to perform their duties under such programs."

Section 2 of Senate Bill No. 51 provides that all state funds, grants-in-aid from federal allocations, and other moneys or funds contributed or matched, for developing or providing public outdoor recreation facilities and opportunities made available to existing departments or agencies, are to be expended through such departments or agencies using their established procedures. Directed or force construction activities are to be undertaken and conducted only by those departments or agencies having basic authorization for such work.

Senate Bill No. 51 gives the State Outdoor Recreation Agency many of the authorities required by the federal government for participation in the funds. The bill does not give the agency the power to develop, operate, and maintain outdoor recreation areas and facilities or the power to acquire land, waters, and interest in land and waters for recreation purposes. However it is our understanding that all of these authorities need not be vested in a single state agency. In this connection we would note that section 2 of Senate Bill No. 51 provides direct or force construction activities are to be undertaken and conducted only by those departments or agencies having basic authorization for such work and that funds for developing or providing public outdoor recreation facilities and opportunities are to be expended through the departments or agencies to which they are made available. Other state agencies such as the State Water Commission, do have such authority.

We would also note that Senate Bill No. 51 was recommended to the Legislature by the Legislative Research Committee. The report on this bill as contained on pages 87 through 90 of the 1965 Report of the North Dakota Legislative Research Committee leaves no doubt but that the intent of Senate Bill No. 51 was to permit the state to participate in the Land and Water Conservation Fund Act of 1965. In fact, a great portion of the Legislative Research Committee Report on Senate Bill No. 51 is devoted to a discussion of this federal act.

In view of Senate Bill No. 51 enacted by the 1965 Legislative Assembly creating the State Outdoor Recreation Agency and in view of the additional statutory provisions giving certain of the other state agencies the right to acquire and develop public recreation facilities, it is our opinion the State of North Dakota has the necessary legal authorities to participate in the Land and Water Conservation Fund Act Program.

HELGI JOHANNESON

Attorney General