

**OPINION**  
**65-425**

September 3, 1965 (OPINION)

Mr. J. W. Moore, President

North Dakota Trade Commission

RE: Trade Commission - Appropriation - Loan

This is in response to your letter in which you ask for an opinion on the following question, "\* \* \* is it possible for this new Commission to get a temporary loan or financing from the State Emergency Commission or a similar State Agency until the results come in from our licensing campaign?" You also ask if this is not possible, would you be permitted to make a loan from a local lending agency, which loan is to be repaid with interest from the license fees collected. Such loan would be made by pledging the license fees to be collected but would not become an obligation of the State.

The North Dakota Trade Commission was created by chapter 330, which amended section 51-10-06 of the North Dakota Century Code. The Legislature appropriated out of any moneys in the Trade Commission fund the sum of \$50,000.00 for the biennium beginning July 1, 1965 and ending June 30, 1967 for the purpose of carrying out the provisions of the Act. The Act provides that the Commission shall require and provide for registration and licensing of retailers. The fee for the annual license shall be \$2.50. The Act further provides that the fees so collected shall be deposited in a special fund to be known as the Trade Commission fund. Expenditures from said fund may be made by vouchers approved by the Secretary of the Commission, and approved by the State Auditing Board and upon warrant checks prepared by the Department of Accounts and Purchases.

As of now the necessary administrative action has not been accomplished to implement the provisions of the North Dakota Trade Commission Act, consequently, no fees have been collected.

It is somewhat elementary that "credit" must be resorted to in one form or another to implement the provisions of the Act because no appropriation from any other source other than stated above was made. As a result of this, the only funds available to the Trade Commission would be the fees collected.

The Emergency Commission has funds at its disposal which come from the general fund and not from special funds. In direct response to your first question it is our opinion that application to the Emergency Commission does not have any funds which are available to the North Dakota Trade Commission.

Upon the creation of the State Wheat Commission an opinion was issued to Mr. Otis Tossett on May 29, 1959, which concluded that the Wheat Commission could borrow money to implement the provisions of the Wheat Commission Act and as collateral they could pledge the

anticipated revenue from the tax imposed by the Act. In that opinion it is further held that the Commission could not obligate the State.

The situation is somewhat analogous to the situation of the Wheat Commission. While there is no specific authority granted to the Commission in the instant situation, the implication is that the Commission may, if the need arises, pledge its anticipated revenue from license fees to implement and accomplish the purposes for which the Commission was created.

It is therefore our opinion that the Commission may borrow money from private lending agencies and as collateral pledge the license fees to be collected under the Act. It would be incumbent upon the Commission to exercise sound business judgment in determining the amount of money to be borrowed and the interest to be paid thereon. However, in no event may the Commission enter into any agreement which would obligate the State of North Dakota to repay any of the money borrowed. It is further observed that the Commission may not in any event exceed the expenditure of \$50,000.00 during the next biennium (July 1, 1965 to June 30, 1967), including interest to be paid on funds borrowed.

ATTORNEY GENERAL

Helgi Johanneson