

**OPINION  
65-98**

July 16, 1965            (OPINION)

Mr. Russell W. Stuart

Commissioner

Game and Fish Department

RE: Game and Fish - Boat Races - Regulations

This is in reply to your request for an opinion of this office in regard to the interpretation of section 61-27-10 of the North Dakota Century Code, particularly with regard to the holding of regattas, races, marine parades, tournaments or exhibitions on waters of North Dakota. It appears that the specific factual situation that prompts this inquiry is with regard to a particular event which is proposed to be held on Garrison Reservoir as of this coming Sunday. Section 61-27-10 provides as follows:

"REGATTAS, RACES, MARINE PARADES, TOURNAMENTS OR EXHIBITIONS.

- "1. The department may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments or exhibitions on any waters of this state. It shall adopt and may, from time to time, amend regulations concerning the safety of motorboats and other vessels and persons thereon, either observers or participants. Whenever a regatta, motorboat or other boat race, marine parade, tournament or exhibition is proposed to be held, the person in charge thereof, shall, at least ten days prior thereto, file an application with the department for permission to hold such regatta, motorboat or other boat race, marine parade, tournament or exhibition. The application shall set forth the date, time and location where it is proposed to hold such regatta, motorboat or other boat race, marine parade, tournament or exhibition, and it shall not be conducted without authorization of the department in writing.
- "2. The provisions of this section shall not exempt any person from compliance with applicable federal law or regulation, but nothing contained herein shall be construed to require the securing of a state permit pursuant to this section if a permit therefor has been obtained from an authorized agency of the United States."

"Department" as used in the above statute, of course, refers to the North Dakota state game and fish department. (See section 61-27-01, subdivision 7 of the North Dakota Century Code.)

We find no case law (decisions of the supreme court of this state) construing same, so can only suggest that same must be enforced according to its terms.

There may be some problem with regard to the concurrent state-federal jurisdiction of navigable waters, however, we are, at the current moment, familiar with no federal permission granted to hold the particular race in question. While we are not suggesting that the state of North Dakota can obstruct a specifically authorized federal project, but there is no indication that the proposed event is a specifically authorized federal project.

Aside from this statute, the basic authority of the state game and fish department under this chapter of the code would appear to be with regard to numbering of motorboats and safe operation of boats. It is our opinion that there is no authorization for prohibiting nonshow fee-paid boats from entering any part of the reservoir.

HELGI JOHANNESON

Attorney General