

**OPINION
66-229**

December 12, 1966 (OPINION)

Honorable William L. Guy

Governor

RE: State - Job Corps Program - Nonprofit Corporation

This is in response to your letter in which you set forth some of the current problems experienced in the fiscal administration of the Job Corps Program. You also state that "We have discussed these problems with officials of the Office of Economic Opportunity and the suggestion has been advanced that we consider establishing a nonprofit corporation to assume administrative responsibility for the Job Corps. They feel that this structure would still keep it related to the state's goals in conservation and, at the same time, allow the federal rules and regulations to govern the expenditure of federal money." You then ask for an opinion on the following questions:

1. Under the proposed purpose and by-laws, could the nonprofit corporation be construed in any way to be an actual agency of state government?
2. Would any provisions of the state constitution or the state law govern the expenditure of federal money under the nonprofit corporation as suggested?
3. Would the State of North Dakota be responsible in any way for obligations or liabilities that may grow out of the operation of the Job Corps as proposed?"

Basically all grants or other similar contributions made by the United States Government have conditions attached them which must be met in order to qualify for the grants or contributions. The State invariably is put into the position of having to accept the conditions or forego participation in the program. To a great extent, some of the answers would depend largely upon the conditions imposed by the United States Government. We do not assume to understand all of the possibilities which might be deemed satisfactory to the federal government. What may be done and still be in compliance with the conditions of the federal government is a question which must be presented to the federal government and answered by its representatives.

As to the formation of a nonprofit corporation to administer the Job Corps Program, such may be accomplished by following the procedure outlined in Chapter 10-24 of the North Dakota Century Code. Whether such corporation would satisfy the requirements of the federal government is, of course, within the prerogative of the federal government. The corporation formed under this chapter would be a private corporation as distinguished from a governmental or public corporation. For that matter the State, under Article-7, Section 131 of the North Dakota Constitution, is prohibited from creating corporations other than public (governmental) corporations.

The thought occurred that the State might provide by legislation for the operation of a special type corporation with rather limited powers specifically designing such corporation to operate a job corps center, but such legislation might reasonably be deemed as being in conflict with the provisions of Section 69 and Section 70 of the North Dakota Constitution.

In the final analysis, there is no provision of which we are aware which would permit the State to create a nonprofit corporation which would not be a public or governmental corporation. Neither are we aware of any provision of law which would permit the formation of a nonprofit corporation by individuals which would be deemed an agency of the State government. Out of necessity, the corporation would have to be either a governmental corporation or a private corporation. Thus, in direct response to Question No. 1., it is our opinion that if a nonprofit corporation is formed under the appropriate provisions of law, it would not be construed as an agency of the State of North Dakota.

As to Question No. 2., the earlier discussion forces the conclusion that the State of North Dakota could not successfully enact laws which would control the expenditure or the fiscal administration of the nonprofit private corporation formed under appropriate laws. The officers of the nonprofit (private) corporation would have control of the corporation subject to the limitations provided for in Chapter 10-24, which apply to all nonprofit corporations. In a sense, it would be comparable to a number of nonprofit corporations functioning in the State of North Dakota, such as Children's Village and other similar organizations. The control of the expenditure of funds for any such nonprofit corporation would be no greater than it would be for any other nonprofit private corporation. Any attempt by the North Dakota Legislature to specifically control the expenditure without applying it to other corporations might be invalid under the provisions of Section 69 and Section 70 of the North Dakota Constitution. Thus, in direct response to Question No. 2., it is our opinion that the State laws and the State Constitution would not govern the expenditure of federal money under the nonprofit corporation, except as the State laws and Constitution apply to all non-profit corporations.

As to Question No. 3., the nonprofit corporation must either be a private corporation or a public governmental corporation. If it is a private corporation, the State of North Dakota would not be responsible for any obligations or liabilities incurred by such corporation. If, however, the corporation is one created by the Legislature and is a public or governmental corporation, it would be an agency or arm of the government. As such, the State would be liable in the same manner and under the same terms and conditions as it would be for any other State agency or department. It is therefore our opinion that if a nonprofit private corporation is organized, the State would not be responsible for any of the obligations or liabilities incurred by such corporation in the operation or administration of the Job Corps Program. If, however, the nonprofit corporation is created by the State Legislature, it would be a governmental or public corporation and the State would be subject to obligations or liabilities of such corporation in the same

manner as any other State agency or department.

Whether or not the federal government will recognize a nonprofit private corporation as qualifying for the administration and operation of a job corps program is a question we are in no position to answer, and out of necessity, it must be answered by the authorities of the federal government.

If a private nonprofit corporation can qualify, the expenditures made by the private corporation would not be subject to State review, nor would the expenditures be required to be submitted to the State Auditing Board or other State agency. However, we wish to make the observation that if a private corporation is formed, the State would have no control over such private corporation in any manner other than the statutes which now control nonprofit private corporations.

HELGI JOHANNESON

Attorney General