

**OPINION
67-89**

June 8, 1967 (OPINION)

Mr. Kenneth E. Raschke

Commissioner

Higher Education

RE: Higher Education - Experiment Stations - Sale

This is in reply to your letter of June 5, 1967, relative to Section 5 of H.B. No. 502 as enacted by the 1967 Legislative Assembly. You state the following facts and questions:

The State Board of Higher Education has directed me to request a written Attorney General's opinion regarding Section 5 of H.B. No. 502 as enacted into law by the Legislative Assembly during the 1967 Session. This bill provides for the appropriations, general operation, maintenance, and improvements of the Extension Division and Experiment Stations of North Dakota State University of Agriculture and Applied Science.

Section 5 reads as follows:

The Board of Higher Education along with the dean of the main experiment station is hereby directed and authorized to phase out any branch experiment station which in their good judgment is not contributing substantially to the overall research programs in agriculture in the state of North Dakota.'

"Specific questions which we would appreciate having answered are:

1. Does the authorization provided by this law permit and include the sale of the real estate now owned by the state of North Dakota and designated as one or more of the branch experiment stations, in event such branch experiment station is determined to be '. . . not contributing substantially to the overall research programs in agriculture in the state of North Dakota'?
2. In the event the State Board of Higher Education does have the authority under this law to sell the real estate occupied by one or more of the branch experiment stations, are the provisions and procedures of Chapter 54-01-05.1 and 54-01-05.2, North Dakota Century Code, the correct ones to utilize in the sale? If not, what procedures should be observed?
3. Does the authorization contained in Section 5 of H.B. No. 502, 1967 Session, have effect beyond the close of the 1967-69 biennial period? That is, does this section of the law have an indefinite period of applicability unless amended or repealed?

4. In the event the opinion finds the law does not authorize the sale of the real estate of one or more of the branch experiment stations, what interpretation may be given to the term 'phase out'?"

Our answers to your questions are as follows:

1. Whatever the term "phase out" may mean as used in Section 5 of H.B. No. 502, we do not believe it contains or implies authority to sell land held by the state of North Dakota for the use and benefit of any given experiment station. This office has consistently held that the authority of an agency to sell real property belonging to the state must be expressly granted by the Legislature. We cannot read such authority into the provision of Section 5 of H.B. No. 502, cited above. The term "phase out" is at best an indefinite one.
2. In view of our answer to the first question it would not appear necessary to answer to your second question. However we would note that Sections 54-01-05.1 and 54-01-05.2 of the North Dakota Century Code specify the procedure to be followed when any department or agency of the state, other than the Board of University and School Lands and the Bank of North Dakota, is authorized to sell any real property. These sections do not authorize the sale of property but merely regulate the procedure of sale where another statute authorizes the sale without specifying the procedure. As stated in reply to question number one, we do not believe such authorization to sell property can be read into the provisions of Section 5 of H.B. No. 502.
3. Appropriations, by their own terms, are effective only for a biennial period and are canceled thirty days after the close of each biennial period. See Section 54-44.1-11 of the North Dakota Century Code, as amended. In this instance, however, the provisions of Section 5 are not specifically attached to any appropriation although contained in an appropriations bill. The provision is found in a separate section of the bill. In view of the fact the provision is not attached to any specific appropriation, it is our opinion the authorization contained in Section 5 of H.B. No. 502, 1967 Session, continues in effect beyond the biennial period, i.e., this section of the law is effective unless amended or repealed by future Legislative Assemblies.
4. Since we have determined that the term "phase out" as used in Section 5 of H.B. No. 502 does not authorize the sale of the real estate of one or more of the branch experiment stations, we must attempt to construe the term as used therein. The term is not a technical word of art. It has no commonly understood meaning in the law.

"Phase" as apparently used in the above cited provisions is

defined by Webster's New Twentieth Century Dictionary (second edition) as: "any of the stages or forms in any series or cycle of changes, as in development." The term "out" as defined by the same source and in the sense apparently used in the above cited provisions is "from existence, operation, or activity; as fade out, burn out, die out." Construing these two definitions together, it would appear the intent of this phrase means to cease activities by degrees. Thus it would appear to us the Board of Higher Education and the Dean of the Main Experiment Station are directed and authorized to cease activities at such experiment stations as in their good judgment are not contributing substantially to the overall research programs in agriculture in the State of North Dakota. Activities as an experiment station may be terminated. However the real property may not be sold. It is improbable that the cessation of activities as an experiment station would permit the cessation of all activities at the stations since it might well be that the preservation of buildings, cultivated lands, etc., will necessarily require some form of caretaker operation at least.

If it is determined that activities as an experiment station should be terminated we would suggest that the Board and the Dean take steps to assure the preservation of property at such experiment station or stations and then prepare a report for the next Legislative Assembly so that they may either enact appropriate legislation for the disposition of the property or take such other action as they may deem necessary. In the alternative we believe the Board and the Dean, if they believe an experiment station or stations should be terminated, may continue to operate same during the biennium, but prepare a report for the next Legislative Assembly for appropriate legislative action.

HELGI JOHANNESON

Attorney General