

**OPINION
69-354**

August 19, 1969 (OPINION)

Mr. Russell Staiger

Planning Administrator

State Planning Division

RE: State - Planning Division - Proper Title

This is in reply to your letter of August 27, 1969, in which you request an opinion from this office on the following question:

Should all legal documents signed by the State Planning Agency be signed as such or should the correct terminology be 'State Planning Division.' Or should the Agency be listed as a Division of the Department of Accounts and Purchases, which becomes quite cumbersome."

We note that Chapter 54-34.1 creating the agency in question was enacted by the 1963 Legislative Assembly. See Chapter 51, 1963 Session Laws. When first enacted, the State Planning Agency was headed by the Director of Economic Development, who was to be known as the Director of State Planning. The 1969 Legislative Assembly removed the agency from the Director of Economic Development and placed it under the Department of Accounts and Purchases. See Chapter 447, 1969 Session Laws. In so doing, the Legislature did not amend all the appropriate statutes relative to this matter. Thus section 54-34.1-01 was not amended by the 1969 Legislative Assembly and provides as follows:

DEFINITIONS. In this chapter, unless the context of subject matter otherwise requires the term 'planning agencies' shall mean and include the departments, agencies, instrumentalities of the federal, state, county, township, or municipal governments engaged in planning activities, including regional and metropolitan planning agencies as authorized herein, and educational institutions, research organizations, whether public or private, civic groups, and private persons and organizations engaged in planning activities." (emphasis supplied)

Section 54-34.1-03 was not amended and provides as follows:

STATE PLANNING AGENCY - PURPOSES. It shall be the purpose of the state planning agency to advise, consult, coordinate, assist, and contract with or on behalf of the various planning agencies in developing and harmonizing the planning activities of this state. Nothing in this chapter shall operate in derogation of planning powers conferred upon departments, agencies or instrumentalities of state, counties, townships or municipal corporations by any existing state or local law.

However the Legislature did amend section 54-34.1-02 in the 1969

Legislative Assembly and this section provides as follows:

STATE PLANNING AGENCY CREATED. In order to promote the health, safety and general welfare of the citizens of this state, there is hereby created a state planning division which, for administrative purposes, will be placed as a division of the department of accounts and purchases and under the director of the department of accounts and purchases. The director of the state planning division shall be appointed by and serve at the pleasure of the governor."

We note that in amending this section the Legislature did not alter the title to delete the word "agency" and insert the word "division". However the title or headnote is not part of the statute. See section 1-02-12 of the North Dakota Century Code.

It does not appear to us that whether the agency is referred to as the "State Planning Agency" or "State Planning Division" is of particular significance since this is not an incorporated agency and derives its powers only from the State. Thus it is, in fact, the State of North Dakota which is the part to contracts, etc., rather than the agency as such. However, in view of the amendment by the 1969 Legislative Assembly, it is our opinion the better term to use when referring to the agency would be "State Planning Division" since that is the term used in the most recently enacted statutes and, if there is a conflict, the most recently enacted statute would supersede the previously enacted statutes which use the term "State Planning Agency."

HELGI JOHANNESON

Attorney General