

OPINION
69-359

December 9, 1969 (OPINION)

Mr. Clinton R. Ottmar

Attorney for the State Hospital

RE: State - State Hospital Lands - Posting

This is in response to your request for an opinion of this office with regard to the legality of forbidding hunting on certain portions of state hospital land contiguous to the hospital itself.

Your letter informs us that some time ago the state hospital put up "No Hunting" signs around a portion of its pasture land, and that the purpose of such posting was to insure the safety of the hospital's cattle which graze in this area.

Your letter further states that the hospital authorities were advised that they had no right to post state land and that the signs should be removed.

Your letter calls to our attention the provisions of Chapter 20-01 of the North Dakota Century Code. It requests our opinion regarding the legality of posting "No Hunting" signs in this situation, and if our opinion is that posting such signs was improper, whether our opinion would be the same if "No Trespassing" signs were placed on the premises.

Chapter 20-21 of the North Dakota Century Code does prescribe a statutory method of posting of lands by the owner or tenant to prohibit hunting, and prescribes a criminal penalty for violation of such posting. Additionally, generally speaking, the owner of land does have limited rights to allow or prohibit others from entering upon his land, though the criminal penalty prescribed in section 20-01-17 of the North Dakota Century Code would apply only to violation of the statutory provisions therein contained.

We note that, while in some instances the quantum of estate taken by the state is limited to the purposes for which it is taken (See *Wallentinson v. Williams County*, 101 N.W.2d. 571), the quantum the state is permitted to take for "public buildings or grounds" is a fee simple. (See section 32-15-03 of the North Dakota Century Code). On this basis we would assume that, for practical purposes and the purposes of Chapter 20-01 of the North Dakota Century Code, the State of North Dakota is the "owner" of the state hospital buildings and grounds.

The state, through its legislature, has neither directly specifically prohibited or directly specifically allowed hunting on the state hospital grounds.

Section 15-01-05 of the 1969 Supplement to the North Dakota Century Code provides in part:

GENERAL POWERS AND DUTIES OF SUPERINTENDENTS OF VARIOUS INSTITUTIONS. - The superintendent of each of the institutions mentioned in this chapter shall be the chief executive officer of the institution of which he is a superintendent and, in connection with such institution shall:

1. * * *
2. Have general charge of the institution and the grounds thereof;
3. Have general charge of the institution and of the grounds and discipline of all persons, employees, and patients at or connected with the institution;

* * *."

While certain authority over the institution is granted to the mental health and retardation division of the state department of health (See section 25-10-04 of the 1969 Supplement to the North Dakota Century Code), the actual superintendence of the institution would appear to be granted to the superintendent of such institution by said section 25-01-05.

On such basis it is our opinion that the superintendent of the State Hospital does have the authority to make a reasonable determination, within the standards of discretion given him, as to whether the State of North Dakota allows hunting on its state hospital grounds. If the determination is that hunting shall not be allowed on such grounds or parts thereof, he may specify the methods that will be used to prevent such hunting on such grounds within, of course, the usual, reasonable methods used to prevent such hunting. We would further assume that for all purposes, including the provisions of Chapter 20-01 of the North Dakota Century Code such determination and the methods used to carry it into effect are the action of the "owner" of such premises.

HELGI JOHANNESON

Attorney General