

**OPINION
69-365**

October 23, 1969 (OPINION)

Mr. Milo Hoisveen

Engineer - Secretary

North Dakota State Water Commission

RE: State - Water Conservation Commission - Underwriting Revenue Bon

This is in response to your letter with regard to the State Water Commission's Construction Bond Guaranty Fund as established by Section 61-02-56 of the North Dakota Century Code.

Your questions are stated as:

- 1) May the State Water commission use the Construction Bond Guaranty Fund to underwrite revenue bonds issued by any North Dakota political subdivision such as boards of county commissioners, municipalities, water management districts and park boards, or may it be used only for revenue bonds issued by the State Water Commission?
- 2) Must the use of the Construction Bond Guaranty Fund be limited to only irrigation projects or may it be used to underwrite other revenue producing projects such as municipal or industrial water supply, sewage treatment, recreation, etc.?"

The first sentence of section 61-02-56 of the North Dakota Century Code provides:

Whenever the commission shall find it necessary to insure or guaranty the payment of a part of the principal or interest of any series of water conservation commission revenue bonds, in order to sell or market such bonds, it may enter into an agreement to pledge, hypothecate, obligate, place under trust indenture, or agree to deposit in a trust fund, moneys appropriated by chapter 95 of the Session Laws of 1939 for 'construction bond guarantee' and in addition thereto, moneys now or hereafter appropriated, thus to guaranty and insure the payment of interest on and principal of state water conservation commission revenue bonds."

Appropriate provision is made in section 61-02-57 of the North Dakota Century Code to prevent reversion of the moneys so appropriated and any unexpended balances thereof to the general fund at the end of any biennial fiscal period.

The authorization contained in the above quoted sentence of said section 61-02-56 is in its terms limited to "water conservation commission revenue bonds" and "state water conservation commission revenue bonds." On such basis, it is our opinion that, in the absence of further legislation, the state water conservation

commission may not use the construction bond guaranty fund as designated in said section 61-02-56 to underwrite revenue bonds issued by any North Dakota political subdivision such as boards of county commissioners, municipalities, water management districts and park boards, and under current legislation may use it only for revenue bonds issued by the state water conservation commission.

In reply to your second question, we note that the above quoted portion of said section 61-02-56 authorizes use of this fund with regard to "any series of water conservation commission revenue bonds." Section 61-02-46 of the 1969 Supplement to the North Dakota Century Code authorizes issuance of state water commission revenue bonds. "* * * for the purpose of paying the cost of any one or more of the works authorized by this chapter and for the purpose of acquiring lands and preparing and developing the same for irrigation. * * * ." "This chapter" is chapter 61-02 of the North Dakota Century Code, as amended to date, entitled "Water conservation commission", which includes such subjects as the Powers and Duties of the Commission (Section 61-02-14). "Works" as defined in that chapter by section 61-02-02 thereof, includes such things as "conservation, development, storage, treatment, distribution, and utilization of water including, without limiting the generality of the foregoing subdivisions, works for the purpose of irrigation, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization." On such basis, it is our opinion that the use of the Construction Bond Guaranty Fund, as same has been heretofore considered, is not limited to only irrigation projects, but that it may be used to guarantee and insure the payment of interest and principal on revenue bonds, as provided for, and within the limits set by, said section 61-02-56, such as municipal or industrial water supply, sewage treatment, recreation, etc., works.

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Attorney General