

**OPINION
71-306**

October 22, 1971 (OPINION)

Mr. Harold G. Vavra

Director

Aeronautics Commission

RE: State - Aeronautics Commission - Authority

This is in response to your letter of October 4, 1971, requesting opinion and certification of this office as to the legal authority and power of the North Dakota Aeronautics Commission with regard to a statewide airport system planning project.

We assume that for purposes of this inquiry "airport system planning," means as defined in subdivision 5 of 49 USCA section 1711:

* * * the development for planning purposes of information and guidance to determine the extent, type, nature, location, and timing of airport development needed in a specific area to establish a viable and balanced system of public airports. It includes identification of the specific aeronautical role of each airport within the system, development of estimates of system-wide development costs, and the conduct of such studies, surveys, and other planning actions as may be necessary to determine the short-, intermediate-, and long-range aeronautical demands required to be used by a particular system of airports."

We assume further that "planning agency" as hereinafter considered refers to "planning agency" as defined in subdivision 8 of said 49 USCA, section 1711, which states:

- 8) 'Planning Agency' means any planning agency designed by the Secretary which is authorized by the laws of the State or States (including the Commonwealth of Puerto Rico, the Virgin Islands, and Guam) or political subdivisions concerned to engage in areawide planning for the areas in which assistance under this subchapter is to be used."

You indicate that applicable federal regulations require certification of local counsel that the sponsor possesses the powers cited as follows:

- 1) That the sponsor is a legal entity and qualifies as a 'planning agency'.
- 2) That the sponsor is legally empowered to provide the type of planning assistance or perform the type of planning work proposed in the application.
- 3) That the sponsor is empowered to receive and expend federal funds, and to provide or obtain and expend other funds for

the purposes stated in paragraph 204a(2).

- 4) That the sponsor is empowered to contract with the United States for the purposes of receiving and expending federal funds."

You therefore request our opinion and certification as to whether the North Dakota Aeronautics Commission possesses the legal authority and powers cited as follows:

- 1) Is the Aeronautics Commission a legal entity?
- 2) Does the Aeronautics Commission qualify as a 'planning agency' insofar as planning, directing, and contracting for 'State Airport System Plans'?
- 4) Is the Aeronautics Commission legally empowered to receive and expend federal funds for the purpose of paying part of the costs of 'State Airport System Plans'?
- 5) Is the Aeronautics Commission legally empowered to expend funds appropriated to the commission by the legislature in chapter 40, subdivision 4, line 5 of the 1971 Session Laws, for the purpose of contracting with persons, companies, or corporations and the United States for ordering and paying the costs of 'State Airport System Plans'?
- 6) Is the Aeronautics Commission empowered to contract with the United States for the purpose of receiving and expending federal funds, for the purpose of paying for the costs of 'State Airport System Plans'?"

We, of course, do not purport to construe the applicable federal legislation and regulations. However, within the context as heretofore indicated on the basis of the state law, it is our opinion and we do hereby certify that:

- 1) The North Dakota Aeronautics Commission is a legal entity. See definition of that term as "legal existence" citing Department of Banking v. Hedges, 136 Nebraska 382, 286 N.W. 277, 281 at page 1039 of "Black's Law Dictionary, Revised Fourth Edition." See also Duerfeldt v. State Game and Parks Commission, 166 N.W.2d. 737, 740, 184 Nebraska 242, and chapter establishing same: Chapter 2-05 of the North Dakota Century Code as amended to date. We note, of course, that judicial precedent cited on this point is not from the Supreme Court of this state, but would assume that in any event the State of North Dakota acting through the North Dakota Aeronautics Commission would be a legal, corporate and sovereign entity.
- 2) The North Dakota Aeronautics Commission is a planning agency insofar as planning, directing, and contracting for state "airport system plans," is concerned, in view of its general supervision over aeronautics within this state, granted by section 2-05-05 of the North Dakota Century Code, its authority to encourage the establishment of

airports and air navigation facilities, and to cooperate and assist the municipalities of this state and other persons in the development and coordination of all aeronautical activities also granted in said section 2-05-05 and its contracting authority granted by section 2-05-06 of the North Dakota Century Code. (See also, section 2-05-06.1 of the 1971 Supplement to the North Dakota Century Code in this regard).

- 3) The North Dakota Aeronautics Commission is legally empowered to contract for State Airport System Plans. See sections 2-05-05, 2-05-06 and 2-05-06.1 of the North Dakota Century Code as amended to date.
- 4) The North Dakota Aeronautics Commission is legally empowered to receive and expend federal funds for the purpose of paying part of the costs of "State Airport System Plans?" (See section 2-05-06.1 1971 Supplement to the North Dakota Century Code.)
- 5) The North Dakota Aeronautics Commission is legally empowered to expend state funds pursuant to and within the limits of the appropriation to said commission made by the Legislative Assembly of the State of North Dakota in chapter 40, subdivision 4, line 5, 1971 Session Laws, for the purpose of contracting with persons, companies or corporations and the United States for ordering and paying the costs of state "Airport System Plans." See statutory authority heretofore cited.
- 6) The North Dakota Aeronautics Commission is empowered to contract with the United States for the purpose of receiving and expending federal funds, for the purpose of paying for the costs of state "Airport System Plans." See statutory authority and appropriation heretofore cited.

The questions heretofore considered and therefore the answers thereto are very broadly worded and are, of course, relevant to a particular context established by the federal statutes heretofore mentioned, which will not always be the specific context in which the North Dakota Aeronautics Commission operates. We therefore reiterate, as previously indicated herein, that this opinion and the conclusions expressed therein is limited to the type of project, in the type of context herein considered, and is not intended to apply to other functions, activities or operations of the North Dakota Aeronautics Commission. If further certifications are necessary for specific applications or projects, do not hesitate to call upon us for the same.

HELGI JOHANNESON

Attorney General