

**OPINION
71-13**

May 20, 1971 (OPINION)

Mr. H. L. Thorndahl
President
Bank of North Dakota

RE: Bank of North Dakota - Building - Appropriation

This is in response to your letter of May 11, 1971, wherein you request an opinion of this office concerning the provisions of House Bill 1020 as passed by the 1971 Legislative Assembly and approved by the Governor on March 30, 1971. The provisions of House Bill 1020 set out the appropriations for the Bank of North Dakota, a state agency, for the biennium beginning July 1, 1971, and ending June 30, 1973.

You submit the following facts and inquiry in your letter:

"At the last Industrial Commission Meeting several alternatives for remodeling the Bank of North Dakota were discussed and considered. One of them was the possibility of erecting a new building for the Bank on the Capitol grounds. I was requested to secure an Attorney General's Opinion whether or not this was possible.

"Attached is a copy of House Bill 1020 setting out the appropriations for the Bank of North Dakota for the 1971-1973 biennium. You will note Section 2 whereby \$750,000 was appropriated 'for the remodeling and expansion of facilities not including a drive-in window.' In keeping with this appropriation could this \$750,000, or as much as necessary, be used to construct a new building? On the Capitol grounds? Or elsewhere?

"If it could be used to construct a new building on the Capitol grounds, would there be any conflict with Chapter 48-10, North Dakota Century Code, Capitol Grounds Planning Commission? Could the Capitol Grounds Planning Commission authorize such a building on their own volition without specific legislative approval?"

The initial and most determinative issue presented by your inquiry is the interpretation of Section 2 of House Bill 1020, as it relates to the intent of the Legislature in appropriating the moneys for the Bank of North Dakota. With regard to the Capitol Grounds Planning Commission's powers, we note that Section 48-10-01 of the North Dakota Century Code, as amended, basically provides for the creation of the commission, prescribes its duties and provides for compensation of its members. We note that the general duties under that section relate to planning, developing and modifying plans and approving and disapproving structures as to basic style and construction of buildings and facilities to be located on the Capitol grounds.

With regard to their powers and duties as related to expenditures of funds administered by that commission, we note that Section 48-10-02 of the North Dakota Century Code, as amended, provides that the commission, acting through the state land commissioner and the state land department, shall have general powers to superintend the administration of the Capitol building fund and properties. In addition, we note that it is provided, "It may cause any lands now held in such funds to be sold at market value, direct the expenditures from such funds subject to law and legislative appropriations, and to do all other things necessary to carry out the intent and purposes of this section." (emphasis supplied). Accordingly, we find nothing contained in Chapter 48-10 which would grant the Capitol Grounds Planning Commission any authority to approve or disapprove the construction of such building upon the Capitol grounds excepting as to structure and basic design. It would appear that the question must necessarily find its resolution in the authority for such construction in legislation directed towards such construction. For this reason it would appear that the sole question which would need to be considered by your inquiry is whether House Bill 1020, as passed and approved, grants the authority for the construction of a separate building for the added facilities of the Bank of North Dakota. This would appear to hold true whether the building would be constructed on the State Capitol grounds or elsewhere.

Section 2 of House Bill 1020 provides as follows:

"APPROPRIATION. There is hereby appropriated out of any moneys in the state treasury in the Bank of North Dakota fund the sum of \$750,000.00 for the remodeling and expansion of facilities not including a drive-up window, \$750,000.00 or so much thereof as may be necessary, during the biennium beginning July 1, 1971 and ending June 30, 1973."

The singular issue depends upon the interruption of that portion of the legislation which states, "for the remodeling and expansion of facilities." In this connection we note that the appropriation is granted to an agency which currently has an existing structure. We would also note that the word utilized in the provision is not singular in form but includes remodeling and expansion. It would appear that the intent of such provision contemplates both remodeling and expansion rather than remodeling of an existing structure, and expansion by means of creation of a new structure independent of the existing structure, which must be contemplated by the provision for remodeling. Had the Legislature so worded the measure to state "expansion" as a singular purpose, it would be conceivable that a new and independent structure may have been authorized thereunder. For this reason we are compelled to conclude that the better interpretation of House Bill 1020 contemplates an appropriation for the remodeling of the current existing structure and expansion of facilities as may be effected by such remodeling plans.

In direct reply to your inquiry, we are of the opinion that House Bill 1020, setting out the appropriations for the Bank of North Dakota for the 1971 through 1973 biennium, does not authorize the construction of a new building but authorized the remodeling of the currently existing structure and effecting expansion of facilities by

reason of such remodeling. With regard to conflicts with Chapter 48-10 of the North Dakota Century Code, as amended, which relates to the Capitol Grounds Planning Commission, we do not see any conflicts as far as approving or disapproving such structural design or location is concerned; however, we do not believe that such commission may approve or disapprove the construction or that such commission may grant the authority for such construction, in absence of specific legislative approval therefor.

HELGI JOHANNESON

Attorney General