

**OPINION
71-332**

May 17, 1971 (OPINION)

Mr. Walter R. Hjelle

Commissioner

State Highway Department

RE: State - Highway Corridor Board - Membership

This is in response to your letter in which you set forth the following pertinent provisions of section 24-17-06 which in part states as follows:

"HIGHWAY CORRIDOR BOARD - MEMBERS. There is hereby established, to serve as an agency of the state and to perform the functions conferred upon it in this chapter, the highway corridor board, hereinafter referred to as the board. The board shall be composed of the following five members: the North Dakota state highway commissioner or his authorized agent; the director of the business and industrial development department or his authorized agent; * * *"

and the pertinent provisions of section 54-34-06 which in part and is material to the question states as follows:

"DUTIES OF DIRECTOR OF BUSINESS AND INDUSTRIAL DEVELOPMENT DEPARTMENT. The director, under the supervision of the governor and subject to legislative appropriation, shall have the following powers and duties:

* * *

The director shall not be appointed or required to serve on any additional boards, committees, or commissions of state government. His sole responsibility, except as otherwise provided by the legislative assembly, shall be to encourage, promote, and advertise in the interests of business and industrial development in the state of North Dakota as provided in this chapter."

You further note that the phrase "business and industrial development department" as it appears in section 24-17-06 was substituted for the phrase "economic development" by the code revisor to correspond to the name change resulting from the enactment of the business and industrial development act.

You then ask for an opinion whether or not the limitation contained in section 54-34-06 would prohibit the director of the business and industrial development department from appointing an agent to serve on the corridor board.

Section 24-17-06 was enacted by section 6 of chapter 291 of the 1967 Session Laws. As you have noted, the initial act provided that the

membership on the highway corridor board consisted of the following five members: the North Dakota state highway commissioner or his authorized agent; the director of economic development commission (which has been changed to the director of business and industrial development department to correspond with the name change as a result of the enactment of chapter 54-34 of the North Dakota Century Code) or his authorized agent; the commissioner of agriculture or his authorized agent, etc.

From the language employed it becomes eminently clear that the legislature designated certain persons to either serve on the highway corridor board or to designate an agent to serve on such board. The term "or his authorized agent" is a broad term and is without any specific limitation. It is clear, however, that the legislature intended that the person holding a certain specific position could designate (authorize) someone to act in his stead. This further implies that the designation be someone in whom the "director" has faith and trust. There obviously is no other limitation. The person so designated is, in fact, the agent of the director.

As you pointed out, the last unnumbered paragraph in section 54-34-06 specifically provides that the director (director of business and industrial development department) shall not be appointed or required to serve on any additional boards, committees, or commissions of the state government. It continues by providing that "The sole responsibility except as otherwise provided by the legislative assembly shall be to encourage, promote and advertise in the interest of business and industrial development in the state of North Dakota as provided in this chapter." Section 54-34-06 was enacted later in time than the enactment of section 24-17-06 and if there were an irreconcilable conflict, the provisions of section 54-34-06 would normally prevail. However, we note that the legislature also provided that no other responsibility shall be placed upon the director except as otherwise provided by the Legislative Assembly. The term, "except as otherwise provided by the legislative assembly" clearly implies that any other duties imposed upon the director by law would be in harmony with the provisions of section 54-34-06. The legislature clearly prohibited the appointment of the director to other duties by some appointing authority, but the prohibition is not against the legislative assembly imposing additional duties and functions. For that matter, both sections 24-17-06 and 54-34-06 are legislative enactments. Section 54-34-06 cannot be construed as if it were a constitutional provisions.

It is therefore our opinion that the director of the business and industrial development department is not prohibited by law from appointing a person to serve on the highway corridor board.

HELGI JOHANNESON

Attorney General