

OPINION  
73-256

February 28, 1973 (OPINION)

The Honorable Arthur Bunker  
Speaker of the  
House of Representatives  
State Capitol  
Bismarck, North Dakota

Dear Mr. Speaker:

This is in reply to your request for an opinion of this office clarifying the status of the revenue bonds issued by the State Board of higher Education pursuant to the provisions of chapter 15-55 of the North Dakota Century Code.

The revenue bonds issued pursuant to the provisions of chapter 15-55 of the North Dakota Century Code are not full faith and credit bonds of the State of North Dakota or of the institution in whose behalf they are issued by the board. Thus, section 15-55-03 of the North Dakota Century Code provides in part:

" \* \* \* The bonds issued under the provisions of this chapter shall not be an indebtedness of the state of North Dakota nor of the institution for which they are issued nor of the state board of higher education thereof, nor of the individual members, officers or agents thereof nor shall any building or other campus improvement or the land upon which it is situated, or any part thereof be security for or be levied upon or sold for the payment of said bonds, but the said bonds shall be special obligations payable solely from the revenues to be derived from the operation of the building or other campus improvement, and the board is authorized and directed to pledge all or any part of such revenues to the payment of principal and interest on the bonds. \* \* \* "

Subsection three of the same section authorizes the Board of Higher Education to insert in the resolution authorizing the bonds a provision:

"To covenant as to the rights, liabilities, powers and duties arising from the breach of any covenant or agreement into which it may enter in authorizing and issuing the bonds;"

Section 15-55-09 of the North Dakota Century Code provides:

"CONSTRUCTION OF CHAPTER NOT TO PERMIT OBLIGATING OF STATE. Nothing in this chapter shall be construed to authorize or permit the state board of higher education, or any officer or agency of the state, to create any state debts, or to incur any obligations of any kind or nature, except as shall be payable solely and only from the special funds to be created from the revenues of the building or buildings or other campus improvements erected or constructed under the terms and provisions of this chapter, nor shall the state of North Dakota

or any funds or moneys of this state other than the special funds derived from the income of said building or buildings or campus improvements respectively ever be deemed obligated for the payment of the said bonds or any part thereof."

Section 15-55-07 of the North Dakota Century Code provides in part:

" \* \* \* All bonds issued under the provisions of this chapter, shall have endorsed thereon, a statement to the effect that the same do not constitute an obligation of the state of North Dakota, the state board of higher education, nor the individual members, officers or agents thereof, nor of the institution upon the campus of which the building or campus improvement is located, and that the said bonds are payable solely and only out of the revenues to be produced and received from the operation of said building or campus improvement. \* \* \*"

The same section requires such bonds to be approved by this office. In examining such bonds, we have determined that they contain the required statements. The resolutions authorizing the issuance of the bonds, as well as the bonds themselves, make it quite clear they are payable only from the revenues of the building and are not obligations of the state nor the institution for which they are issued. As a legal matter, therefore, the bondholders may not look to the state for payment of these bonds in case of default.

Sincerely yours,

Allen I. Olson

Attorney General