

OPINION  
73-434

April 5, 1973 (OPINION)

The Honorable Arthur A. Link  
Governor  
State of North Dakota  
State Capitol  
Bismarck, ND 58505

Dear Governor Link:

This is in reply to your letter of April 4, 1973, relative to the Director of Institutions. You state the following facts and questions:

"State law requires that the Director of Institutions be confirmed by the State Senate. During the recent session of the Legislature, I submitted two names to the State Senate, including the name of the incumbent Director of Institutions, and both of these names were rejected.

"I now have the following questions to submit:

- 1) Since the incumbent Director of Institutions was rejected by the Senate, can he continue serving in that capacity until another Director of Institutions is appointed?
- 2) How long do I have to select a new Director of Institutions?
- 3) If I have an immediate deadline in selecting a new Director of Institutions, could I appoint an Acting Director until such time as a permanent Director could be selected?"

The position of Director of Institutions is established pursuant to section 54-21-06 of the North Dakota Century Code, as amended. This section provides in part:

" \* \* \* Any appointment of a Director of institution shall be submitted to the Senate for its approval or disapproval. If the Senate shall fail to approve or disapprove within thirty legislative days, or if the governor shall have submitted a name for approval prior to the thirty-fifth legislative day and the Senate fails to approve or disapprove before the legislative assembly adjourns sine die, the appointment shall be deemed to be approved. No appointee whose appointment has been disapproved by the Senate shall be appointed or reappointed by the governor to such position. \* \* \* "  
(emphasis ours)

Because of the last underscored sentence in the statute quoted above, we believe your first question must be answered in the negative. It is our opinion that by enacting such a provision the Legislature intended a person rejected by the Senate should not hold or continue to hold the office of Director of Institutions after such rejection.

The term of the Director of Institutions is for four years beginning on January 1, 1973. The Senate is no longer in session. Were we to conclude that a nominee who was rejected by the Senate could serve until the next Legislative Assembly, presumably in 1975, such nominee could hold the office for half of the prescribed term. As indicated above, such action would, in our opinion, be contrary to the expressed intent of the Legislature.

With respect to your second question, since the Senate is not in session we assume, from a legal standpoint, you would not be required to appoint a new Director until such time as the Senate is in Session. As you know that would be in 1975 barring any special sessions of the Legislature. We realize that it is not practical, from an administrative standpoint, to have a vacancy exist in the position.

In answer to your third question, it is our opinion you can appoint an acting Director until such time as a permanent Director is selected. However, it would not appear that time could extend beyond the next session of the Senate. In addition, we would note that any nominee rejected by the Senate could not be named to a position for the prescribed term but in other respects has the same authority and jurisdiction as the Director. Since such nominees cannot hold the position of Director, it follows they cannot be appointed Acting Director.

I trust this will adequately answer the questions presented.

Very truly yours,

Allen I. Olson

Attorney General