

**OPINION
73-454**

June 19, 1973 (OPINION)

Mr. Gary Leppart

State Liaison Officer

North Dakota State Outdoor Recreation Agency

State Office Building

900 East Boulevard

Bismarck, North Dakota 58501

Dear Mr. Leppart:

This is in reply to your letter of March 23, 1973, with regard to assistance of an Indian Tribal Council in outdoor recreation developments.

You inform us that an official from the Bureau of Indian Affairs has requested your office to assist a named Indian Tribal Council with outdoor recreation developments.

You therefore request our opinion as to the legal authority of an Indian Tribal Council to enter into an agreement with the State Outdoor Recreation Agency for receiving federal fund assistance from the U.S. Bureau of Outdoor Recreation.

The authority of the State Outdoor Recreation Agency is given in very broad and general terms. Insofar as the Indian Tribal Council in question does have a form of jurisdiction over extensive land area in the State of North Dakota, we would assume that the State Outdoor Recreation Agency could cooperate with Indian Tribal Councils in some phases of its operations, such as, for example, those specified in Subsections 1, 2 and 3 of Section 53-07-01 of the 1971 Supplement to the North Dakota Century Code, as follows:

"53-07-01. OUTDOOR RECREATION AGENCY - FUNCTIONS. - The agency, without limiting the generality thereof, shall be vested with the power, authority, duty and general jurisdiction to:

1. Undertake the development of broad recreation policies for the state as a whole and a long-range plan for their implementation;
2. Initiate a continuing appraisal of the total state recreation resources, potentials, and needs and the adequacy of current efforts to meet the demands;
3. Provide for the coordination and appraisal of related programs administered by all levels of government and by private enterprise;

* * *

However, its authority does not appear to be so broad with regard to administration of federal grants. Thus, Subsections 4 and 6 of said Section 53-07-01 provide:

" * * * The agency, without limiting the generality thereof, shall be vested with the power, authority, duty and general jurisdiction to:

4. Cooperate with the United States or any appropriate agency thereof, particularly in connection with the distribution and use of federal aid funds which the state may become eligible to receive;

* * *

6. Apply for and receive federal grants-in-aid for recreation purposes. It shall approve their allocation to specific projects only after it has determined that sufficient funds, including those funds necessary for adequate maintenance, are and will be available from the state or political subdivisions as the case may be for meeting the state's share of project costs. It for any reason it shall become necessary for any department or agency of the state to expend state funds in order to fulfill any obligation of a political subdivision which it has agreed to perform in the construction or maintenance of such projects, the state shall have a claim against the subdivision for such money expended. All funds allocated to the state for recreation purposes shall be distributed to the departments, agencies or political subdivisions entitled thereto; and

* * * (underlining ours)

While the tribal council obviously exercises governmental authority and jurisdiction over definitely ascertained territory, it is not the state and its territory and people are not a political subdivision of the state. In such circumstances the fact that the tribal council under the appropriate federal regulation would otherwise be eligible to receive those funds would not make the state eligible to receive such funds under the above quoted provision of said Subsection 4, and even though the tribal council may have sufficient local matching funds, same are not available from the state or political subdivision, and even though the funds might otherwise be allocated to the state for such purposes, the Tribal Council and its territory would not be a department, agency, or political subdivision, within the meaning of said Subsection 6.

On such basis, while we do conclude that the State Outdoor Recreation Agency could enter into general agreements for outdoor recreation plans and cooperate generally with Indian Tribal Councils, in recreation project development, we must necessarily conclude that the Indian Tribe and Indian Tribal Councils, are not the state or a political subdivision, department or agency thereof, to the extent that the State Outdoor Recreation Agency could apply for, or

distribute federal grants-in-aid or other federal funds to them under the statutory provisions establishing that agency. We are enclosing herewith a copy of a letter of this office on a related problem dealing with another agency of this state, in a similar situation.

We hope the within, foregoing and enclosed material will be of assistance to you in this matter.

Sincerely yours,

ALLEN I. OLSON

Attorney General