

**OPINION
73-618**

October 9, 1973 (OPINION)

The Honorable Arthur A. Link
Governor
State Capitol
Bismarck, ND 58501

Dear Governor Link:

This is in reply to your letter of September 18, 1973, relative to the appropriation for the Souris-Red-Rainy project. You state the following facts and questions:

"House Bill 1015 (Chapter 15, 1973 Session Laws) provided a line item appropriation of \$60,000 for state participation in the Souris-Red-Rainy project. The Souris-Red-Rainy River Basins Commission terminated on June 30, 1973, by operation of Section 7 of Executive Order No. 11359 of June 20, 1967, as amended. The Souris-Red-Rainy River Basins Commission, however, was incorporated with the existing Upper Mississippi River Basin Commission pursuant to Executive Order 11659, dated March 22, 1972, as amended by Executive Order 11737, dated September 7, 1973. This merger will be a vehicle for continuing the valuable work of the Souris-Red-Rainy River Basins Commission.

"The \$60,000 had originally been deleted from the Water Conservation Commission Appropriation because of the anticipated discontinuance of the federal funding for the Souris-Red-Rainy River Basins Commission (H. J. 652). This \$60,000, however, was reinstated in the Senate (S. J. 918-6). The express intent of the reinstatement was 'to allow \$60,000 for state participation in the Souris-Red-Rainy project if federal funds continue for the program, but the funds shall not be expended if federal funds are not available.' The apparent intent was to fund the Souris-Red-Rainy project if matching federal funds were received through any source.

"Although the Souris-Red-River Basins Commission has been terminated, the 'Souris-Red-Rainy project' has not been terminated. Therefore, is continued funding of the Souris-Red-Rainy project under the Upper Mississippi Basin Commission sufficient condition precedent to authorize the expending of any or all of the \$60,000 appropriation for Souris-Red-Rainy project purposes?"

As you have noted in your letter, the appropriation made by the 1973 Legislature was for the Souris-Red-Rainy "project" rather than for the Souris-Red-Rainy "Commission." Had the appropriation been for the Commission, it could not have been expended since the Commission has been terminated. However Executive Order 11737 signed by the President on September 7, 1973, did include within the Upper Mississippi River Basin Commission those portions of the States of Minnesota and North Dakota that are drained by the Souris-Red-Rainy

Rivers System. The Order further provided for one member from the State of North Dakota, among other states, to serve on the Upper Mississippi River Basin Commission. The Order further provided that all funds, property, records, employees, assets and obligations of the Souris-Red-Rainy River Basins Commissions are, with the concurrence of the Governors of the affected states, transferred to the Upper Mississippi River Basin Commission, effective as of July 1, 1973. The Governors had concurred in such transfer on June 6, 1973. Such action is authorized by virtue of section 61-02-24 of the North Dakota Century Code, as amended.

It is therefore our opinion that the Souris-Red-Rainy project still exists within the framework of the Upper Mississippi River Basin Commission and that continued federal funding of the Souris-Red-Rainy project under such Commission is sufficient condition precedent to authorize the expending of any or all of the \$60,000 appropriation for such purpose as contained in Chapter 15 of the 1973 Session Laws of North Dakota.

Sincerely yours,

Allen I. Olson

Attorney General