

OPINION
74-310

September 10, 1974 (OPINION)

Ms. Alisa Simonson
Director
State Laboratories Commission
Lock Box 937
Bismarck, ND 58505

Dear Ms. Simonson:

This is in reply to your letter of August 16, 1974, in which you state the following facts and questions:

"I request your opinion concerning the legality of the State Laboratories Commission issuing revenue bonds pursuant to Chapter 36 of the 1973 Session Laws. That act authorizes the Commission to issue bonds for the purpose of paying the cost of construction of a building to house the State Laboratories Department in an amount not to exceed \$750,000.00. The State Lab has twice advertized for bids and twice rejected all bids for the reason that the total amount of the bids exceeded the amount of moneys authorized for the building. While the building project has not been terminated it has been delayed and future authorizing legislation may be sought. However, the architect is now entitled to payment under the contract between the Commission and the architect and some moneys are needed to pay the architectural fee and other incidental fees."

This office has previously held that fees connected with the construction of a building, such as architectural fees, are properly paid from funds designated for such building. Thus we have concluded that architects fees may be paid from the proceeds of bonds issued to construct a building or from the proceeds of a building fund levy. The same rationale would apply in this instance and we believe the fees for the architect and other incidental fees concerned with advertising for bids, etc., are properly a charge against the fund from which the building is to be constructed, i.e., the proceeds of the revenue bonds. Section 5 of chapter 36 of the 1973 Session Laws provides in part:

"For the purpose of paying the cost of construction of a building to house the state laboratories department, the state laboratories commission may borrow money on the credit of the revenue to be derived from fees collected by the department pursuant to law. In anticipation of such collections, the commission may issue negotiable bonds in a total amount not to exceed \$750,000, and may provide for the payments of those ponds . . . in one or more series . . . as may be provided by resolution of the Commission. * * * "

"The proceeds of any bonds issued under the authority of this section are hereby appropriated to the state laboratories commission for construction of a building to house the laboratories department. Construction and furnishing of the building shall be contracted for and supervised by the state laboratories commission or its designee."

In view of such provisions, it is our opinion that the Laboratories Commission may issue such amount of bonds, not to exceed \$750,000.00, as it may deem necessary and may use the proceeds of such bonds to pay for the construction of a Laboratories Department building, including the cost of the architects fee for such building. The fact that the Commission has, as of the present time, rejected the bids for construction of the building does not alter the authority to issue bonds as provided above.

Sincerely,

Allen I. Olson

Attorney General