

**OPINION  
75-60**

July 14, 1975           (OPINION)

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

Dear Governor Link:

This is in response to your letter of July 9, 1975, wherein you request an opinion of this office relative to Public Law 93-288, an Act entitled the "Disaster Relief Act Amendments of 1974", pertaining to individual and family grant programs. You submit the following matters and questions in your letter of inquiry:

"Public Law 93-288, An Act Entitled the "Disaster Relief Act Amendments of 1974", provides under Section 408(a) for individual and family grant programs. Attached is a copy of the Act and I refer you to page 13 for the provisions of the program.

Section 408(b) states

The Federal share of a grant to an individual or a family under this section shall be equal to 75 per centum of the actual cost of meeting such an expense or need and shall be made only on condition that the remaining 25 per centum of such cost is paid to such individual or family from funds made available by a State. Where a State is unable immediately to pay its share, the President is authorized to advance to such State such 25 per centum share, and any such advance is to be repaid to the United States when the State is able to do so.

I am requesting in the near future that the President declare a state of disaster in eight southeastern counties due to flooding. If it would be possible to provide assistance under this section, I would like to request it. In order to do so, however, the state would have to obligate itself for 25 percent of such costs paid to individuals.

I, therefore, am requesting an opinion from your office as to whether or not the state could be committed and if such funds could be approved by the Emergency Commission. In view of the emergency matter of the problem, I would appreciate your early consideration."

In answering your question, it is necessary to examine the provisions of Section 185 of the North Dakota Constitution which provides as follows:

"The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, but neither the

state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association, or corporation except for reasonable support of the poor nor subscribe to or become the owner of capital stock in any association or corporation." (emphasis supplied)

It is observed that the constitutional provision prohibits loaning or giving credit or making donations to or in aid of any individual, association or corporation except for the reasonable support of the poor.

The North Dakota Supreme Court in *State v. Nelson County* 45 N.W. 33, held that the issuance of bonds by a county to procure seed grain for needy farmers was valid as a measure for the necessary support of the poor. The Supreme Court in a later period of time also held that assistance to the aged does not contravene Section 185 of the North Dakota Constitution (See *State ex rel. Eckroth v. Borge* 283 N.W. 521), and in a similar vein the Supreme Court in *Weber v. Weber* 42 N.W.2d. 67, concluded that the state has no constitutional common law duty to provide old age assistance but had permissive authority to do so under Section 185.

With this background we will address ourselves to the question submitted.

In direct response to your question, the state would be prohibited under the provisions of Section 185 of the North Dakota Constitution to make grants of state money to individuals and families unless it is determined that such individuals and families are poor. Whether the situation described in your letter of inquiry is one that has resulted in financial losses that render all the contemplated recipients of such direct grants as "poor" is a question of fact which is beyond the scope of proper determination by this office. The fact that flooding and property losses have occurred would not necessarily or of itself classify an individual or family as "poor." If, on the other hand, such disaster does create a situation which demands a factual classification as "poor", the grant could be made.

With regard to the obstacle which we have outlined, however, we would note that this would not be present if all of the funds for grants were provided by the Federal government with the state administering the grant. The more difficult determination presented by your letter of inquiry relates to that portion of Section 408(b), Public Law 93-288, which provides as follows:

\* \* \* Where a State is unable immediately to pay its share, the President is authorized to advance to such State such 25 per centum share, and any such advance is to be repaid to the United States when the State is able to do so." (emphasis supplied)

It appears to us that there exists considerable flexibility in the authorization for an advance of the 25 per centum matching funds of the repayment of such funds. This flexibility precludes consideration of several other issues which may or may not become involved, depending upon the Federal interpretation or guidelines

that may exist relative to this authorization. For this reason it is impossible for this office to consider all of the possible ramifications or issues which may eventually present themselves in connection with the commitments by the state which may be required in order to obtain the benefits of the grant specified under Section 408(b) of Public Law 93-288. Accordingly, we would suggest that inquiry be made of appropriate Federal authorities to determine the extent and general guidelines that govern the qualifying advance aspect of the grant and its repayment upon which to formulate a basis for consideration of other state requirements or restrictions.

Accordingly and in direct response to your question, we are of the opinion that the state would not be permitted to become absolutely committed to the expenditure of funds for the purposes described in your letter unless it can be established that the individuals or families would fall into the classifications of being "poor."

We trust this answers your inquiry.

Sincerely,

ALLEN I. OLSON

Attorney General