

**LETTER OPINION**  
**80-61**

February 7, 1980 (OPINION)

Mr. Larry L. Kruckenberg  
Commissioner  
North Dakota Game and Fish Department  
2121 Lovett Avenue  
Bismarck, North Dakota 58505

Dear Mr. Kruckenberg:

This is in reply to your letter of January 7, 1980. You state the following facts and question:

The 1979 session of the N.D. Legislature passed an initiated measure relating to the investment of Game and Fish funds and retention of the interest on those investments by the Game and Fish Department. The passage of this initiated measure puts our Department in a unique position among state agencies. It brings about a question regarding the latitude that our Department has in the investment of these funds.

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I respectfully request your formal opinion regarding what legal limitations the N.D. Game and Fish Department is bound by involving the latitude of investments that can be made with the moneys on deposit for the N.D. Game and Fish Department in the Bank of North Dakota.

The initiated measure referred to in your letter was approved by the voters on November 7, 1978, and is codified at section 20.1-02-16.1 of the North Dakota Century Code.

20.1-02-16.1. USE OF GAME AND FISH FUND. All income of the state game and fish department, deposited by the commissioner with the state treasurer shall be credited to the state game and fish fund and said fund shall be used only by the department. All money derived from the investment of said fund or portions thereof shall be credited to said fund.

The manner in which your question was stated in your letter suggests that the Game and Fish Commissioner may have some authority regarding the investment of those public moneys mentioned in section 20.1-02-16.1. However, in reviewing the powers and duties of the Game and Fish Commissioner, as set forth in sections 20.1-02-04, 20.1-02-05, and 20.1-02-15 of the North Dakota Century Code, we are unable to find any authority vested with the Commissioner to invest state funds. Furthermore, we do not believe that the Initiated Measure, by its own terms, established such authority with the Commissioner.

Section 20.1-02-16.1 requires that the income of the State Game and Fish Department be forwarded to the state treasurer. This

requirement is in accordance with Section 186 of the Constitution of North Dakota, which states as follows:

SECTION 186. (1) All public moneys, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the state treasurer, and deposited by him to the credit of the state, and shall be paid out and disbursed only pursuant to appropriation first made by the legislature; provided, however, that there is hereby appropriated the necessary funds required in the financial transactions of the Bank of North Dakota, and required for the payment of losses, duly approved, payable from the state hail insurance fund, state bonding fund, and state fire and tornado fund, and required for the payment of compensation to injured employees or death claims, duly approved, payable from the workmen's compensation fund, and required for authorized investments made by the board of university and school lands, and required for the financial operations of the state mill and elevator association, and required for the payment of interest and principal of bonds and other fixed obligations of the state, and required for payments required by law to be paid to beneficiaries of the teachers' insurance and retirement fund, and required for refunds made under the provisions of the Retail Sales Tax Act, and the State Income Tax Law, and the State Gasoline Tax Law, and the Estate and Succession Tax Law, and the income of any state institution derived from permanent trust funds, and the funds allocated under the law to the state highway department and the various counties for the construction, reconstruction, and maintenance of public roads.

However, Section 186 does not give the state treasurer the authority to invest public funds. Our review of the duties and authority of the state treasurer indicates that there is no grant of power, expressly or impliedly, by the State Constitution or statutes to the state treasurer to invest appropriated or institutional funds.

As there might be some confusion on this particular point, it would appear appropriate to make a determination as to which state agency has the legal authority to invest those moneys accumulated in the State Game and Fish Fund.

To begin with, it should be noted that section 6-09-07 requires all state funds to be deposited in the Bank of North Dakota. In State ex rel. Lemke v. District Court of Stutsman County, 186 N.W. 381 (N.D. 1921), our Supreme Court stated it is the duty of the state treasurer to deposit all state and state institutional funds which come into his possession in the Bank of North Dakota.

The income from the State game and Fish Department, mentioned in section 20.1-02-16.1, is deposited with the State Treasurer who, in turn, deposits the income with the Bank of North Dakota. The fact that this income is to be credited to the State Game and Fish Fund and that said fund is to be used only by the State Game and Fish Department does not change the conclusion that the Bank of North Dakota has possession of and maintains these moneys.

The statutes outlining the power and authority of the Bank of North Dakota to make investments using funds held on deposit are stated as follows:

6-09-01. PURPOSES AND ESTABLISHMENT OF BANK OF NORTH DAKOTA. For the purpose of encouraging and promoting agriculture, commerce, and industry, the state of North Dakota shall engage in the business of banking, and for that purpose shall maintain a system of banking owned, controlled, and operated by it, under the name of the Bank of North Dakota.

6-09-02. INDUSTRIAL COMMISSION TO OPERATE BANK - BUSINESS OF BANK. The industrial commission shall operate, manage, and control the Bank of North Dakota, locate and maintain its places of business, of which the principal place shall be within the state, and make and enforce orders, rules, regulations, and bylaws for the transaction of its business. The business of the Bank, in addition to other matters specified in this chapter, may include anything that any bank lawfully may do, except as it is restricted by the provisions of this chapter. This provision shall not be held in any way to limit or qualify either the powers of the industrial commission granted by nor the functions of said Bank as defined in this chapter.

6-09-15. BANK MAY MAKE LOANS - LOAN LIMITATIONS.

1. That Bank of North Dakota may:

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- e. Invest its funds in bonds, notes, or debentures of any corporation incorporated under the laws of any state of the United States rated at "A" or higher by a nationally recognized rating service approved by the industrial commission and short term commercial and finance company paper rated A-1 or P-1. Such investments shall not be made to exceed for any one corporation ten percent of the combined capital and surplus of the Bank.

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The above statutes establish in the Bank of North Dakota the requisite legal authority to cause the investment of those moneys accumulated in the state game and fish fund within the limitations set forth therein.

In conclusion, it is our opinion that section 20.1-02-16.1 provides for the investment of those moneys which have accumulated in the state game and fish fund. Although the Game and Fish Commissioner and the state treasurer do not have the necessary legal authority to cause such investments, the Bank of North Dakota does possess such authority. Those statutes outlining limitations and restrictions on the investment of public funds by the Bank of North Dakota are applicable to those investments made from the state game and fish

fund.

Sincerely,

ALLEN I. OLSON

Attorney General