

**OPINION  
44-318**

October 7, 1944      (OPINION)

WATER CONSERVATION COMMISSION

RE: Authority to Issue Bonds

Your letter of October 6 addressed to the attorney general has been received and referred to the undersigned for attention and reply.

You state that the state water conservation commission has under consideration the issuance of bonds for the purpose of retiring or refunding two outstanding bond issues and also to obtain sufficient funds with which to repay certain loans that have been made to the commission in connection with the construction of certain irrigation works and facilities. The two outstanding bond issues which it is proposed to retire are a bond issue known as series "F" and another known as series "I-B".

Your letter states somewhat in detail the purposes for which said series "f" and series "I-B" were issued and it is not necessary to restate here the facts in connection with the issuance of same except to say that from such statements I am satisfied that said bonds were issued for the purpose of financing projects which the water conservation commission was authorized to undertake under the provisions of chapter 256 of the Session Laws of 1939 and the amendments thereto in chapter 300 of the Session Laws of 1941.

Since the outstanding bond issues known as series "F" and series "I-B" were issued for the purpose of financing legitimate projects of the water conservation commission, and since the additional amount required to be raised through the proposed bond issue is also intended for the purpose of the defraying of the cost of other legitimate projects of the commission, it follows that the water conservation commission has the legal authority under chapter 256 of the Laws of 1939 and the amendments thereto in chapter 300 of the Laws of 1941 to proceed with the issuance of such bonds.

You then submit for an opinion from this office the following questions:

1.      May the Commission legally issue such bonds, that is, may it issue a new series of bonds for the purpose of retiring and refunding the two outstanding bond issues and for the further purpose of paying the indebtedness of the Commission for moneys borrowed incident to the Sioux Irrigation District, the Grantier, and the Yellowstone Pumping Irrigation District transactions and pledge as security for the payment of such bonds the securities now pledged for the payment of bonds, Series "F" and Series "I-B", and also further pledge the bonds of the

Sioux Irrigation District, the note and mortgage of Grantier, and the claim against the Yellowstone Pumping Irrigation District, and further pledge and hypothecate a sum equal to 20 percent of the new bond issue under the provisions of Chapter 256, Laws 1939, as amended by Chapter 300, Laws 1941?

2. If they may be done, then may the Bank of North Dakota be named as Trustee in a Trust Indenture securing such bonds?
3. If both the preceding questions are answered in the affirmative, then will it be necessary that the payments received from the securities and the cash that is pledged and hypothecated as security for the payment of the bonds be paid to the State Treasurer or may all such payments be made directly to the Trustee, the Bank of North Dakota, and that Trustee retain full and complete control as such Trustee of all these securities, including the cash deposit under the provisions of said Chapter 256, Laws 1939, as amended by Chapter 300, Laws 1941, together with all payments that may be received upon such securities or from the maker of the bonds?
4. If the foregoing three questions are all answered in the affirmative, may provision be made in the Trust Indenture whereby the Trustee, the Bank of North Dakota, with the approval of the Industrial Commission and the State Water Conservation Commission, may invest any funds on hand not immediately needed for the payment of the bonds, including the money deposited as a guarantee under the provisions of said bonds of the United States of America, and hold the interest received upon such investment as security for the payment of the interest and principal of the bonds of the Commission for which such securities and cash were pledged and hypothecated as security?"

The answer to question no. 1 is "Yes" for the reasons already referred to herein. The purpose of the issue is for a project which the commissioner is authorized to undertake under the statutes referred to herein and it may proceed to hypothecate and pledge as security for the payment of such bonds the securities enumerated in your question no. 1.

Answering question no. 2, I beg to advise that I am satisfied that the Bank of North Dakota may legally be named as trustee in a trust indenture in securing such bonds. This office has previously held on several occasions that the Bank of North Dakota may, under the law creating it, be named as trustee with the usual powers, duties, and responsibilities incident to the trust indenture.

Answering question no. 3, I beg to advise that it is my opinion that it will not be necessary to make direct payments to the state treasurer of funds received from securities and cash that is pledged and hypothecated as security for the payment of these bonds, but that the

same may be paid directly to the trustee and that the trustee has full and complete control as such trustee of all such securities including the cash deposit provided by the statutes applicable thereto, subject, however, to all provisions of law applicable to trustees and trusts created thereunder.

NELS G. JOHNSON  
Attorney General