

OPINION
45-290

December 17, 1945 (OPINION)

UNIVERSITY

RE: Medical Center

Your letter of December 15 addressed to the Attorney General has been received and contents of same have been noted.

You refer to chapter 172 of the Session Laws of 1945 which creates the State Medical Center, and you state that at the initial meeting of the council created by said act, officers were elected, including treasurer. You state further there was some discussion as to the rights and duties of the office of treasurer, and whether in fact a treasurer should be elected.

You also state that the advisory council has at present no appropriation, but it must go to some expense for its meetings and the investigations that it must make, and that it would be convenient for the council and its officers to handle at least a certain amount of funds if they come your way.

Chapter 172 of the Laws of 1945 creates what is known as the "State Medical Center" at the University of North Dakota. Section 5 of the act provides that the university authorities shall make the facilities of such North Dakota State Medical Center available to all agencies of the state, federal, and local governments engaged in health and welfare activities; that the work of the medical school of the university and the medical center shall be coordinated with the work of the other departments of the University of North Dakota.

Section 6 provides for schedules of fees and charges for services and facilities furnished to persons assigned to the North Dakota State Medical Center by public agencies from time to time, after advice and consultation with the Medical Center Advisory Council and the agencies involved.

Section 8 provides that the North Dakota State Medical Center or the University of North Dakota for the use and benefit of said North Dakota State Medical Center is specifically authorized "to accept and use for the purposes of said North Dakota State Medical Center grants, gifts, contributions, fees, rentals, and other payments from any foundation, individual, firm, corporation, institution, public or private agencies or bureaus; and may, within the limits of its funds available enter into such agreements as may be necessary to secure buildings, supplies, maintenance, material and equipment; and may contract with public or private agencies or persons for the rental or use of facilities, services, and equipment not owned by such North Dakota State Medical Center."

Said chapter 172, and particularly section 8 thereof, must be construed in connection with Article 54, Amendment to the State Constitution, which creates the Board of Higher Education, and which has the control and administration of all of the institutions of higher learning in this state. Subdivision E of section 6 of said Article 54 provides as follows:

The said State Board of Higher Education shall have the control of the expenditure of the funds belonging to, and allocated to such institutions and also those appropriated by the legislature, for the institutions of higher education in this State; provided, however, that funds appropriated by the legislature and specifically designated for any one or more of such institutions, shall not be used for any other institution."

Section 8 of chapter 172 is a broad grant of power, but such power is circumscribed by the constitutional provision quoted herein.

While under the provisions of section 8 of the Medical Center Advisory Council has the power to accept and use for the purposes of said North Dakota State Medical Advisory Council grants, gifts, etc., it has not the power to enter into any contract which would subsequently create any liability against the State of North Dakota; for instance, if a grant of say \$100,000 was made to the council for the purpose of erecting a certain building, and said sum was sufficient to complete the building, nevertheless, such a building would naturally entail maintenance expenses and therefore would not be within the powers of the Medical Center Advisory Council.

In the case of *Wilder v. Board of Administration*, 56 N.D. 436, our Supreme Court held invalid chapters 257 and 258 of the Session Laws of 1927 which authorized the construction of dormitories upon the campuses of state educational institutions for the reason that such acts delegated legislative power to an administrative board in violation of Section 25 of the Constitution, which vests legislative power in a Senate and House of Representatives, and Section 182 which fixes a limit upon the obligations that may be incurred by the state.

Furthermore, subdivision E of Section 6 of Article 54, quoted herein, makes it the constitutional duty of the State Board of Higher Education to control the expenditure of funds belonging and allocated to the state educational institutions, as well as those appropriated by the Legislature for such institutions.

Under the constitutional provisions, and the provisions of said chapter 172, the State Medical Advisory Council may receive funds in the nature of gifts, grants, contributions, etc., but such funds must be covered into the state treasury as a trust fund, and be disbursed by the Board of Higher Education as provided by Section 159 of the State Constitution, which provides that all land, money, or other property donated, granted, or received from the United States or any other source for educational or charitable institutions shall be inviolably appropriated and applied to the specific objects or the original grants or gifts, and if a grant or gift is made for a specific purpose; for instance, for the erection and construction of a building to be placed upon the campus of an educational

institution, such building must be authorized and approved by the state Legislature.

While it may be convenient for the council to have a treasurer as one of its organization officers, it would be the duty of such treasurer to cover all funds received by the council into the state treasury, to be disbursed in accordance with the constitutional and statutory provisions cited herein.

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Attorney General