

OPINION
46-18

August 24, 1946 (OPINION)

LOAN OF FUND BY BANK OF N.D. TO MEM. CORP. AT UNIVERSITY

This will acknowledge your letter of August 21, 1946, in which you submit a question presented by President West of the University of North Dakota and which he stated as follows:

Under the law as recited under section 6-0915 or by special resolution of the Industrial Commission, is it possible to make a direct loan to the Memorial Corporation, which is a non-profit enterprise and whose constitution and bylaws limit the activity of the Corporation to actions directly interested and concerning an arm of the State, namely the University of North Dakota?"

Section 6-0915 of the North Dakota Revised Code of 1943 provides, insofar as is pertinent, as follows:

The Bank of North Dakota may transfer funds to other departments, institutions, utilities, industries, enterprises, or business projects of the state, and such funds shall be returned with interest to the Bank. It may make loans to counties, cities, or other political subdivisions of the state, or to state or national banks, on such terms and under such rules and regulations as the industrial commission may determine. It shall not make loans or give its credit to any individual, association, or private corporation, except that it may make loans to actual farmers who are residents of this state, * * *."

The above quoted portion of section 6-0915, as you will note, does not permit the bank to make loans or give credit to any individual, association, or private corporation. The Memorial Corporation of the University is a nonprofit enterprise and its activity, according to its bylaws, is limited to actions directly in the interest of the state, namely the University of North Dakota. Nevertheless, it is my opinion that it would fall within the provision of the statute denying the right of the Bank of North Dakota to make a loan to a private corporation. It is a corporation, and while it might be argued that it is not a private corporation, I deem that the word "private" as applied to corporations is merely descriptive so as to indicate that the prohibition might not apply to corporations set up by the state itself, if the state did create corporations to handle some of its business, as is now so prevalently done by the federal government, and also as distinguished from a public corporation.

Having determined that the Memorial Corporation, a nonprofit organization connected with the University, may not obtain a loan from the Bank of North Dakota, the next question to determine is whether the bank, under the following language of the statute, may loan or transfer money to the University, towit: "The Bank of North Dakota may transfer funds to other departments, institutions, utilities, industries, enterprises, or business projects of the state

and such funds shall be returned with interest to the Bank."

Section 215 of the North Dakota Constitution, dealing with public institutions, states:

The following public institutions of the state are permanently located at the places hereinafter named, each to have the lands specifically granted to it by the United States in the act of congress approved February 22, 1889, to be disposed of and used in the manner as the legislative assembly may prescribe subject to the limitations provided in the article on school and public lands contained in this constitution.

First: * * *

Second: The state university and the school of mines at the city of Grand Forks, in the county of Grand Forks.

Third: * * *

It would, therefore, appear that under the Constitution, the University of North Dakota is designated as a public institution. As such, I believe it comes within the word "institutions" as used in section 6-0915 of the North Dakota Revised Code of 1943, and, therefore, it is permissible for the bank to loan or transfer funds to it as such public institution.

I have ascertained that in the past the Bank of North Dakota has transferred or loaned money to the State School of Forestry for use in erecting a dormitory; that it has loaned or transferred money to the Agricultural College for the erection of barracks. These loans or transfers have been repaid from earnings of the dormitory or barracks, or, in other words, they have been self-liquidating loans. I also understand that the Bank of North Dakota has transferred funds as an advance on an appropriation.

It is, therefore, my opinion that the University of North Dakota may be granted a transfer of funds or a loan under the terms of section 6-0915 of the North Dakota Revised Code of 1943; that such loan should be secured by a note or other evidence of indebtedness to be signed by the Board of Higher Education, which is the governing board of the University of North Dakota, and the president of the University of North Dakota. Before any funds are transferred or loaned to the University, the Board of Higher Education should pass a resolution showing the necessity for a loan, and authorizing the transfer of funds to the University as a public institution, and further designating the method and manner of payment of such transfer of funds or loan. If the money is to be used for housing facilities for students or members of the faculty, the revenues therefrom should be pledged to the repayment of the funds transferred or loaned. If the transfer of funds or loan is an advance upon an appropriation, it is of course understood that the transfer of funds or loan on such appropriation must be expended for the same purpose for which the appropriation was made.

The erection of housing facilities at the University with the funds loaned or transferred to it would not, of course, bind the state to

appropriate money for future maintenance of the property, nor would the loan or transfer of funds be considered a debt of the state.

NELS G. JOHNSON

Attorney General