

**OPINION  
47-100**

May 16, 1947 (OPINION)

EDUCATION

RE: Board of Higher - Grants to

This office is in receipt of your letter of May 15, in which you ask for an opinion of this office on the following proposition.

The Fargo Chamber of Commerce is in the process of making arrangements for the purchase of 310 acres of land which it intends to present as a gift to the State of North Dakota for the use and benefit of the North Dakota Agricultural College. This land is adjacent to the college property and is being bought at a purchase price of \$100.00 per acre.

You inquire whether there are any legal obstacles which would prevent the State Board of Higher Education from accepting this gift of land from the Fargo Chamber of Commerce in behalf of the State of North Dakota and the North Dakota Agricultural College.

Donations of this nature undoubtedly were in the minds of the framers of the Constitution, as evidenced by section 159, which reads as follows:

All land, money, or other property donated, granted or received from the United States or any other source for a university, school of mines, reform school, agricultural college, deaf and dumb asylum, normal school or other educational or charitable institution or purpose, and the proceeds of all such lands and other property so received from any source, shall be and remain perpetual funds, the interest and income of which, together with the rents of all such lands as may remain unsold shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund may be increased but shall never be diminished, and the interest and income only shall be used. Every such fund shall be deemed a trust fund held by the state, and the state shall make good all losses thereof."

Section 159 clearly implies the right of the state to receive donations such as the one proposed by the Fargo Chamber of Commerce on behalf of the state institutions, and such implication is made clear by legislative declaration and construction as found in section 1-0802 N.D.R.C. 1943, which reads as follows:

Devises, legacies, bequests, and gifts may be made lawfully to any state educational, charitable, or penal institution, and the title to any property, real, personal, or mixed which shall be devised, bequeathed, or given to any such institution, or to the state of North Dakota for the use and benefit thereof, shall vest in the state of North Dakota, to be held by it in trust for the benefit and use of the institution to which or for whose benefit such devise, legacy, bequest, or gift is

made. Unless otherwise authorized by the will or other instrument providing for such devise, bequest, legacy, or gift, no part of said property, nor the income therefrom shall be diverted or used for any other purpose."

The parcel of land which the Chamber of Commerce proposes to donate, judging from the purchase price, undoubtedly is agricultural land and such as is well suited for experimental purposes in connection with agricultural pursuits and therefore would fit in with the general program and purpose of the establishment of the agricultural college.

It is the opinion of this office, therefore, that the Board of Higher Education may on behalf of the agricultural college, subject to the limitations and restrictions of section 159 of the Constitution and section 1-0802 N.D.R.C. 1943.

NELS C. JOHNSON

Attorney General.