

**OPINION
47-17**

January 24, 1947 (OPINION)

BANK OF NORTH DAKOTA

RE: Not Authorized to Function as Trust Co.

This will acknowledge the receipt of your letter of January 21, 1947, in which you submit the following question:

Does the Bank of North Dakota have trust powers so that it may act as trustee in a mortgage pledging the equipment and property included in a garbage disposal system, financed under chapter 40-34 of the 1943 Revised Code?"

Under date of October 7, 1944, the then attorney general, Alvin C. Strutz, in an opinion written by Assistant Attorney P. O. Sathre, at the instance and request of J. J. Walsh, secretary to the Water Conservation Commission, held that the Bank of North Dakota had the legal right to enter into a trust indenture with that commission and to function as trustee thereunder. Mr. Strutz, however, did not hold that the act creating the Bank of North Dakota, and prescribing its powers and duties, conferred upon the bank general trust powers, that is to say, to function generally as a trust company. In that opinion, Mr. Sathre said:

* * * I beg to advise that I am satisfied that the Bank of North Dakota may legally be named as trustee in a trust indenture securing such bonds." (Water Conservation Commission bonds.)

The bank thereupon entered into such trust indenture and agreed to act as trustee after having first obtained the specific approval of the State Industrial Commission to do so.

The Bank of North Dakota is an arm or instrumentality of the state created to meet the financial needs of the state and its local subdivisions. It is the fiscal agency of the state. Where the financial requirements of any department of the state are concerned, it is my opinion that the Bank of North Dakota may, subject to the approval, in each instance, of the State Industrial Commission, act as trustee under a trust deed or trust indenture. Thus, for example, if the bonds or warrants issued by the city of Jamestown to finance the construction of a garbage disposal plant, pursuant to the provisions of chapter 40-34 of the 1943 Revised Code, are purchased as an investment by the Board of University and School Lands, or by the State Bonding Fund, or by the Workmen's Compensation Bureau, or other state departments, it is my opinion that the Bank of North Dakota may act as trustee under a trust deed or trust indenture securing the payment of such bonds or warrants.

But it is further my opinion that the bank does not have the authority to function generally as a trust company and that the State Industrial Commission may not confer authority on the bank to act as trustee for the benefit and protection of individual holders of bonds

or warrants unless issued by the state or some department thereof.

NELS G. JOHNSON

Attorney General