

OPINION
51-10

February 1, 1951 (OPINION)

APPROPRIATIONS

RE: Land Grant Institutions

You ask for an opinion from the office of the Attorney General regarding appropriations for land grant institutions. You ask if under the Constitution of the State of North Dakota you can eliminate the item "less estimated income" and throw that into the general appropriation of the institutions affected.

Under section 159 of the Constitution 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.

We further call your attention to Article 54 of the Amendments of the Constitution which reads in part 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;"

It is our opinion that the funds derived from land grants and in some institutions grants from the United States government are earmarked and in no event can become a part of the general fund of the State of North Dakota. However, under the direction of the Board of Higher Education these funds are expended for the benefit of the specific institutions. We, therefore, believe that if the item, "less estimated income" is stricken and the amounts enumerated in such item added to the general appropriation, it will not conflict with the constitutional provisions mentioned for the reason that certain sums of money included can be expended by the Board of Higher Education and is controlled by the Board of Higher Education free from control by the Legislature. However, if the Legislature eliminates the item, "less estimated income" and adds the estimated amount to the general appropriation, it will control all funds except those earmarked under the Constitution, and as to those earmarked under the Constitution the action of the Legislature would in fact be an approval of the expenditures of such funds by the Board of Higher Education and for that reason there would be nothing improper in making the overall appropriation to take into consideration the moneys received from land grants and governmental grants.

In making the general appropriations the legislature would be entitled to take into consideration the estimated amount derived from land grants and such government grants as are not controlled by the state Legislature. While the Legislature cannot put into the general fund moneys derived from land grants, etc. it can be mindful of such funds when it makes its general appropriation and, therefore, it can eliminate the estimated income item and provide in the overall appropriation the amount of money that the Legislature feels the institution needs, this with the understanding that a part of that appropriation is not in fact appropriated but is considered as being used for the benefit of the institution by the Board of Higher Education. We see no reason why the appropriation cannot be made in this manner without in any way conflicting with the constitutional provisions set out.

ELMO T. CHRISTIANSON

Attorney General