

OPINION  
58-9

September 16, 1958            (OPINION)

AERONAUTICS

RE: Aeronautics Commission - Offices of

In your letter of September 4, 1958, you request the opinion of this office as to whether or not the Aeronautics Commission may legally move its office outside of the State Capitol Building to the Bismarck Municipal Airport. You indicate that the Board of Administration has requested that you vacate your temporary quarters in the Legislative Committee Rooms G-5 and G-6 because that space will be needed by the forthcoming Legislature. You specifically cite the pertinent part of section 2-0504 of the 1957 Supplement to the North Dakota Revised Code of 1943 which reads as follows:

The commission shall maintain its office in the state capitol."

Unfortunately the statute above quoted uses the mandatory word "shall" and further spells capitol with "ol" which refers to the building itself rather than the city.

Oral discussion with both you and Mr. H. H. Joos, Chairman of the Board of Administration, reveals that the space is absolutely needed for the Legislature and other space is not available in the capitol building. There is no question that the Board has the power to request that you vacate your present temporary quarters. This power is given them under section 54-2118 of the 1957 Supplement to the North Dakota Revised Code of 1943 which provides "The board shall have charge and control of . . . . the capitol . . . ."

It would also seem that under chapter 2-05 of the 1957 Supplement to the North Dakota Revised Code of 1943 that the Aeronautics Commission has certain statutory duties and that implied therewith would be the power to maintain an office and to carry out said duties.

After careful consideration, it is our opinion that an emergency situation exists which would allow the Aeronautics Commission to move to temporary quarters at the Bismarck Municipal Airport and that the Aeronautics Commission may continue to occupy said office at the Bismarck Municipal Airport so long as the emergency situation continues. It would appear that there are several advantages in locating the Aeronautics Commission at the Bismarck Municipal Airport and that the Legislature may want to amend section 2-0504 of the 1957 Supplement allowing the Commission to maintain its office outside the state capitol at said airport but it is to be pointed out herein that if the Legislature so desires the statute may continue in effect and after the emergency is over the Aeronautics Commission may be required by the Legislature and the statute to move back to the state capitol building.

LESLIE R. BURGUM

Attorney General