

**OPINION
60-94**

January 6, 1960 (OPINION)

EDUCATION

RE: Sale of Original Grant Lands - Bid Computation

This is in reply to your letter of December 29, 1959, requesting an opinion of this office in regard to the sale of original grant school or institutional lands identified as Lots 1, 2, 3, and 4 of Section 36-129-79 Emmons County.

You inform us that the original grant to the State of North Dakota indicated that said Lots 1, 2, 3, and 4 of Section 36-129-79 comprised 129.50 acres. As of the last inspection of same, dated December 17, 1959, only 14 acres of said description remained out of the river. (We presume your reference is to the Missouri River. We further presume that the loss of acreage to which you have reference is due to the gradual erosion of said land by the action of said river).

You further inform us that you have a party interested in making an application to purchase said land. You request our opinion as to whether the department can accept a bid computed on the basis of \$25.00 per acre on the acreage actually there (i.e., 14 acres) or whether you must compute the bid on the basis of \$10.00 per acre times the number of acres present as of the time of the original survey and grant to the State of North Dakota (i.e., 129.50 acres). You further request our opinion on whether the 14 acres or the 129.50 acres would be sold and if same is sold and paid for in full whether you should issue a patent on 14 acres or on 129.50 acres.

The basic requirement in regard to minimum sale prices of original grant school land is section 158 of the North Dakota Constitution providing insofar as here applicable that:

"No original grant school or institutional land shall be sold for less than the fair market value thereof, and in no case for less than ten dollars (\$10.00) per acre,"

It is our opinion that the minimum price per acre referred to in such provision is in regard to the land actually there at the present time, not the originally surveyed premises, and it is, therefore, our conclusion that minimum sale price should be computed on the basis of actual present acreage and that contracts, patents, etc. executed in accordance therewith should describe premises actually involved in the transaction. Insofar as the State of North Dakota is the owner of the beds of navigable rivers, any other computation of acreage could raise confusion as to the extent of rights in the bed of the river intended to be conveyed.

LESLIE R. BURGUM

Attorney General