

**LETTER OPINION
2004-L-56**

August 31, 2004

Mr. Dave Koland
Manager
Garrison Diversion Conservancy District
PO Box 140
Carrington, ND 58421-0140

Dear Mr. Koland:

Thank you for your letter regarding the Garrison Diversion Conservancy District ("District"). You ask whether the District is an instrumentality of the state of North Dakota under Cooperative Agreement No. 6-FC-60-00210 with the United States Bureau of Reclamation.¹ I understand that the purpose of your request is to clarify the District's status pursuant to a question from the Bureau of Reclamation. For the reasons stated below, it is my opinion that the District is acting on behalf of the state and is therefore an instrumentality of the state under Cooperative Agreement No. 6-FC-60-00210 with the United States Bureau of Reclamation.

ANALYSIS

"[T]he phrase 'instrumentality of the state' is a term of art encompassing both state agencies and political subdivisions such as counties, cities, townships, and school districts." N.D.A.G. 2003-L-35 (citing State v. Bonzer, 279 N.W. 769, 772 (N.D. 1938); Feld v. Idaho Crop Improvement Assn., 895 P.2d 1207, 1209 (Id. 1995); Holmes v. Chatham Area Transit Auth., 505 S.E.2d 225, 226-8 (Ga. App. 1998) (statutory phrase "instrumentally [sic] of the state" includes local government units unless the statute specifically excludes local governments from its scope)).

The District is a political subdivision of the state. See N.D.A.G. Letter to Sagsveen (May 3, 1983); N.D.A.G. Letter to Hanson (Sept. 6, 1979). When a political subdivision such as the District is designated either by law or agreement to act on behalf of the state, it is acting as an instrumentality of the state. See Black's Law Dictionary, 802 (7th ed. 1999) (defining "instrumentality" as a means of agency through which a function of another entity is accomplished). See also Ex parte Corliss, 114 N.W. 962, 991 (N.D. 1907) (Spalding, J.,

¹ This Agreement does not explicitly refer to the District as an "instrumentality of the state"; rather, it refers to the District in several places as "a public agency of the State of North Dakota." See Cooperative Agreement No. 6-FC-60-00210 at pp. 1 and 5.

dissenting) (“The distinction between the functions of political subdivisions of the state which relate to their own duties and those wherein they act as the instrumentality of the state for the enforcement of law and for the carrying out of the general policy of state government runs all through the decisions of the courts relating to the liabilities of such subdivisions, . . .”).

In 1986, the North Dakota State Water Commission and the Board of Directors for the Garrison Diversion Conservancy District entered into an Agreement for the Joint Exercise of Governmental Powers (“Joint Powers Agreement”) authorized by N.D.C.C. ch. 54-40 and N.D.C.C. §§ 61-02-24.1 and 61-24-08. The Joint Powers Agreement authorized the Board to act on behalf of the state and execute a cooperative agreement with the Secretary of the Interior, for the state of North Dakota. The Board would, among other things, be the fiscal agency for the state of North Dakota concerning money received from, and payments made to, the United States for the municipal, rural, and industrial program (MR&I) authorized by Section 5 of P.L. 99-294 (the Garrison Diversion Unit Reformulation Act of 1986). Thus, the District was designated to act on behalf of the state as an instrumentality of the state for the purposes authorized in the Joint Powers Agreement and state law.

In November 1986, the District entered into Cooperative Agreement No. 6-FC-60-00210 with the United States Bureau of Reclamation, on behalf of the state of North Dakota. The Cooperative Agreement authorizes the Bureau to provide to the District 75% of the cost, up to \$200 million of the design and construction of MR&I water projects in North Dakota. The Cooperative Agreement recognizes that the District is “a public agency of the State of North Dakota.” See note 1 above.

Thus, it is my opinion that the District is acting on behalf of the state and is therefore an instrumentality of the state for Cooperative Agreement No. 6-FC-60-00210 under the 1986 Joint Powers Agreement between the Commission and the District.

Sincerely,

Wayne Stenehjem
Attorney General

By: Sandi Tabor
Chief Deputy Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).