

**LETTER OPINION
93-L-119**

April 1, 1993

Timothy L. Kingstad
State Land Commissioner
ND State Land Department
918 East Divide Avenue, Suite 410
Drawer No. 5523
Bismarck, ND 58502-5523

Dear Mr. Kingstad:

Thank you for your March 3, 1993, letter asking whether the principal of the capitol building fund may be expended pursuant to legislative appropriation.

The capitol building fund has its origins in the state's Enabling Act. 25 Stat. 676, ch. 180, Feb. 22, 1889. Section 12 of the act states that upon North Dakota's admission to the Union 50 sections of public land "are hereby granted to [North Dakota] for public buildings at the capital . . ." Section 17 of the act makes an additional grant of 50,000 acres "for public buildings at the capital." The proceeds from sales of this land and income derived from leasing it are placed in what is known as the capitol building fund. N.D.C.C. ? 48-10-02.

The Enabling Act places restrictions on the way in which the state may use proceeds from some of the land the act grants to the state. The common schools trust fund, for example, is a "permanent fund." Id. at ?? 11, 14. Only the income earned by the corpus and none of the corpus of the common schools trust fund may be spent. E.g., id.; State ex rel. Board of University and School Lands v. McMillan, 12 N.D. 280, 96 N.W. 310 (1903).

The Enabling Act, however, does not describe the proceeds of the land granted for public buildings at the capital (capitol building fund) as a permanent fund. Indeed, a part of section 11 of the act indicates that the fund does not have the status of a

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permanent fund. Section 11 states, in part:

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various state institutions for which the lands have been granted.

(Emphasis supplied).

Even though the Enabling Act may not require preservation of the corpus of the capitol building fund, the state's constitution must also be examined to determine if it makes this fund a permanent fund.

The only relevant provision of the North Dakota Constitution is Article IX, Section 12, which states that the "seat of government" is to be located at Bismarck and is "to have the lands specifically granted to it by the [Enabling Act], to be disposed of and used in such manner as the legislative assembly may prescribe" This provision does not give the capitol building fund the status of a permanent fund, nor does any other part of the constitution. The N.D. Supreme Court has confirmed this by saying:

What we have said in reference to the limitations imposed by the enabling act and the Constitution upon the power of the Legislature, has no application to what is known as the "capitol land grant." The funds derived from this grant are not required to be kept permanent; on the contrary, under the terms of the grant, they may be used at such times and in such manner as the Legislature may determine. This grant was made expressly "for the purpose of erecting public buildings at the capital for legislative, executive, and judicial purposes." Sections 12 and 17 of the enabling act. The only limitation upon the power of the Legislature is that the proceeds of this grant shall be used for the purposes for which it was made, to wit the erection of buildings at the state capital.

State v. McMillan, 96 N.W. at 315.

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In conclusion, it is my opinion that the legislative assembly may appropriate funds from the capitol building fund which would result in the expenditure of the fund's principal for capital improvements.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

CMC/mh

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