

**OPINION
55-115**

September 19, 1955 (OPINION)

STATE LAND DEPARTMENT

RE: Islands - Authority to Lease

This is in reply to your request for an opinion of this office in regard to whether the state land department still has authority to lease and collect rentals on the islands which you have been leasing in the past.

Prior to the 1953 amendment section 47-0608 of the N.D.R.C. of 1943 provided:

"Islands and accumulations of land formed in the beds of streams which are navigable belong to the state, if there is no title or prescription to the contrary."

The 1953 legislature added the provisions that: "The control and management, including the power to execute mineral leases, of islands, relictions and accumulations of land owned by the state of North Dakota in navigable streams and waters and the beds thereof, shall be in the Bank of North Dakota. All income and proceeds derived from such lands shall be deposited in the general fund for the purpose of defraying the general expenses of the state government. This Act (section) shall not be construed as affecting or changing the provisions of any contract already executed by or on behalf of the state of North Dakota or any department or agency thereof concerning such lands."

Section 15-0719 of the N.D.R.C. of 1943 provides that:

"All islands formed in the beds of navigable streams are the property of the state under the provisions of section 47-0608. The islands may be leased and sold by the board of university and school lands in the same manner as other nongrant lands under the control of the board are leased and sold. All proceeds derived from the leasing and sale of such islands shall become a part of the common school funds and shall be distributed as such."

The above statutes were, in the opinion of this office, intended to apply only to islands belonging to the state of North Dakota by virtue of its ownership, as a sovereign state of the beds of navigable rivers, i.e., small islands generally of this value, usually not surveyed, not claimed by the federal land office at the time of the admission of this state to the union, and islands since formed by accumulation on the beds of the navigable rivers of this state. Thus, these statutes will not govern the disposition of any islands specifically granted to the state of North Dakota for school purposes, nor of surveyed islands previously conveyed to private landowners, by the federal government.

Section 47-0608 of the 1953 Supplement to the N.D.R.C. of 1943 does, in our opinion, amend section 15-0719 of the N.D.R.C. of 1943 to the extent that such leases of islands shall now be made by the Bank of North Dakota and the income and proceeds of such leases shall now be paid into the general fund.

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