

OPINION
58-82

October 13, 1958 (OPINION)

EDUCATION

RE: Construction of Revenue Producing Buildings - Contracts with
Federal Agencies - Authorized Buildings

This is in reply to your letter in regard to acquiring Federal Housing and Home Finance Agency advances for planning the construction of proposed buildings at the various institutions under the control of your board and more particularly at this time for the planning of the construction of a new administration building at the University of North Dakota.

From the context of your letter and the enclosures thereto, it is our understanding that the type of advance concerned is granted eligible nonfederal public agencies under Pub. L 560, Eighty-third Congress, as amended, for use in plan preparation for any public work, other than housing projects which the nonfederal agency is authorized to plan. Advances are required to be repaid without interest when construction is undertaken or started, or in the event the advance is not promptly repaid, interest at the rate of four percent per annum is to be charged.

You request our opinion as to the legal authority of the State Board of Higher Education to enter into contracts with the federal agency for such advances.

It is our opinion that the so-called planning advance is in the nature of a loan from the federal government. Your board would in our opinion not be authorized to incur indebtedness on behalf of the state or its institutions except as authorized by the pertinent legislation and constitutional provisions. We find no specific appropriation of funds or other authorization for the planning of such a project as the new administration building at the present time. It is therefore our opinion that your board is not authorized to bind the state to repay such advances at the present time. We do note the provision of section 15-5504 of the 1957 Supplement to the North Dakota Revised Code of 1943 that: "The board may enter into any agreements or contracts with the United States of America or any agency or instrumentality thereof which it may consider advisable or necessary in order to obtain a grant of funds or other aid to be used in connection with the proceeds of the bonds in paying the cost of the construction, furnishing and equipment of the building." It is our opinion that such advances would be "other aid" within the meaning of the statutory provision and that the type of planning contemplated by the federal act would be a part of "construction" of the building within the meaning of said section 15-5504. It is therefore our opinion that the board is legally authorized at the present time to enter into such planning advance contracts for the construction of building financed pursuant to chapter 15-55 of the 1957 Supplement to the North Dakota Revised Code of 1943. However,

note that the chapter is presently effective to cover buildings designated and authorized by the legislative assembly, only, in other words, the buildings now specified in said chapter 15-55.

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