

**OPINION
67-240**

April 3, 1967 (OPINION)

Mr. Fred P. Brandt

Director

Economic Development Commission

RE: State Planning Agency - Authority - Indian Reservation

This is in reply to your letter of March 16, 1967, in which you set forth the following facts and question:

The Tribal Council of the Standing Rock Sioux Tribe wishes to undertake an urban planning assistance program (701).

As you know, the Standing Rock Reservation is situated in both North and South Dakota. However, its Council headquarters are situated in Fort Yates, North Dakota.

The Tribal Council has adopted a resolution (enclosed) requesting our assistance in this matter. A copy of the proposed scope of services is also enclosed. We are of the opinion that the Reservation should be planned as a unit. Since the State funds involved in any of our local urban planning assistance programs are to cover costs of the staff in administering the programs which are actually carried out by outside consultants, we wish to sponsor and administer the program as a unit. Our normal administrative costs would probably be less and the planning work will definitely be better than if we were to somehow divide the program between the South and North Dakota Planning Agencies, for duplicate administration.

Your opinion is respectfully requested whether or not we may administer a planning program extending beyond North Dakota borders."

It is an elementary rule of law that a state cannot exercise absolute jurisdiction beyond the borders thereof. The State has, in certain instances, authorized certain of its officers and agencies to contract with other states with regard to certain matters. Such authorization is ordinarily accomplished by Legislative action. If, therefore, the State Planning Agency is to administer a planning program extending beyond North Dakota borders, it must do so in accordance with a contract entered into with the proper authorities from such other state. Such contract can be executed only if the Planning Agency has been granted such power by the Legislative Assembly. Since the Planning Agency is a creature of the Legislative Assembly it has only such powers as are specifically granted to it or must necessarily be implied therefrom.

Section 54-34.1-09 of the North Dakota Century Code, as amended, provides:

GRANTS TO PLANNING COMMISSION The state planning agency or any governmental planning agency is authorized to apply for, accept and expend grants from any other planning agency as defined herein for the purpose of this chapter, and to contract with reference thereto.

Section 54-34.1-01 of the North Dakota Century Code, as amended, provides:

DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires, the term 'planning agencies' shall mean and include the departments, agencies, instrumentalities of the federal, state, county, township, or municipal governments engaged in planning activities, including regional and metropolitan planning agencies as authorized herein, and educational institutions, research organizations, whether public or private, civic groups, and private persons and organizations engaged in planning activities."

The term "state" as used in the above statute does, we believe, refer to the State of North Dakota and not to any state of the United States. It will be observed that the statute does not define "planning agencies" as including those agencies established by another state. It therefore appears that section 54-34.1-01, quoted above, would not authorize the North Dakota Planning Agency to enter into a contract with a planning agency from another state.

While we recognize the validity of the reasons set forth in your letter for administering the planning program for the Standing Rock Reservation as a unit, we nevertheless have been unable to find any authority for the North Dakota Planning Agency to administer a planning program extending beyond North Dakota borders.

It is therefore our opinion that the North Dakota Planning Agency does not have the authority to administer a planning program extending beyond North Dakota borders.

HELGI JOHANNESON

Attorney General