

**OPINION
67-251**

March 13, 1967 (OPINION)

Mr. Jack D. Paul

Executive Secretary

Trade Commission

RE: State - Trade Commission - Appropriation

This is in reply to your letter of March 9, 1967, which states the following facts and questions:

As you undoubtedly know, Senate Bill No. 55, authorizing the budget request of the North Dakota Trade Commission for the 1967-1969 biennium was killed in the House of Representatives during the Fortieth Legislative Session of the Legislature. Other Legislative action on the House Bill No. 564 and Senate Bill No. 283 in effect gave continuing life to the Commission and its authority to license all retailers doing business in this State. Therefore it is evident that, even though the Commission will have life and, according to Section 51-10-14 ' . . . shall require and provide for the annual registration and licensing . . . ' there will be no funds for the administration of the Commission and its licensing program.

The Legislature failed to provide any method for the disposal of funds in the Trade Commission Fund or disposal of property. As you can see, we are faced with the problem of a governmental agency in force and operation, but with no funds to operate and the necessity of retiring records, property and funds with no guidelines.

The President of the Trade Commission has asked that your office provide us with an opinion regarding the following questions in order that the proper actions may be taken prior to July 1, 1967, which is the end of the current biennium:

1. Can the Trade Commission remain in operation and handle such complaints as it receives by referring them for action to the Attorney-General's office and/or the several States Attorney?
2. Should the Trade Commission continue to license and if so, who would administer the program and what would the disposition of the funds be?
3. What steps have to be taken to dispose of the Financial Records, Property, Licensing Lists and Records of this office upon dissolution?
4. In the event future licensing is nullified, must this office inform former license holders individually through the mail that there will be no future licenses required by

this agency?

5. Is there any method by which the Trade Commission may utilize the funds in the Commission fund to continue its operation?"

As you have noted, the appropriation measure (Senate Bill No. 55) was not approved by the 1967 Legislative Assembly. Section 51-10-15 of the North Dakota Century Code, as amended, provides as follows:

DISBURSEMENT OF FUNDS. The secretary shall collect the fees provided by this chapter and deposit such funds in the state treasury in a special fund to be known as the trade commission fund. Expenditures, within the limits of legislative appropriation, shall be made upon vouchers approved by the secretary after approval by the state auditing board upon warrant-checks prepared by the department of accounts and purchases.

As you have also noted in your letter, House Bill No. 564 which would have repealed the provisions establishing the Trade Commission was defeated by the Legislative Assembly. Disagreement appeared to exist between the Senate and the House in that the Senate did not approve House Bill No. 564 and the House did not approve Senate Bill No. 55. Senate Bill No. 283 which, as you noted in your letter, was approved, provided an amendment to the existing Trade Commission law which would require each retailer to secure a separate license for each place of business within the state for which a retail sales or use tax permit is required pursuant to the laws of this State. In essence, it would appear there was no agreement between the House and the Senate as to the future of the Retail Trade Commission. In direct reply to your questions:

1. The Legislature did not abolish the Retail Trade Commission and therefore it would appear the Commission may legally remain in operation and handle such complaints as it receives. The law does provide for certain action by the Attorney General and/or the various State's Attorneys. We do not, however, believe that the Trade Commission can act merely as a referral agency, requiring the Attorney General or the State's Attorneys to perform functions which, under the Act, would normally be performed by the Commission.
2. The Trade Commission law, we have noted, is still in effect. Therefore the requirement that retailers obtain a license is still in effect. However it is obviously not possible for the Commission to function effectively without any funds. The decision as to whether the Commission is going to continue its operations and, if so, in what manner, must be determined by the Commission. If licenses are issued, the fees collected therefor must be deposited in the State Treasury in the Trade Commission Fund as provided for by Section 51-10-15, quoted above.
3. If the Commission determines to cease operations, we believe the financial records, property, licensing lists and records of the office should be placed in safekeeping

to await a decision as to their disposal by a future Legislative Assembly.

4. We do not believe the Commission is required to inform former license holders individually through the mail that there will be no future licenses required by the Commission.
5. In view of the fact Section 51-10-15 provides that expenditures from the Trade Commission can be made only within the limits of legislative appropriation, and in view of the fact the 1967 Legislative Assembly did not make any appropriation, we know of no method by which the Trade Commission may utilize the funds in the Commission fund to continue its operation.

In summary, it would appear to us that the Commission, if it is going to continue to operate after July 1, 1967, must do so without any funds. While the statutes require the Commission to operate, we do not believe they can be forced to do so in view of the fact that funds were not appropriated by the Legislative Assembly.

HELGI JOHANNESON

Attorney General