

**LETTER OPINION**  
**93-L-53**

February 17, 1993

Sarah Vogel  
Commissioner of Agriculture  
Department of Agriculture  
600 East Boulevard, Sixth Floor  
Bismarck, ND 58505-0020

Dear Commissioner Vogel:

Thank you for your December 1, 1992 letter requesting my opinion regarding whether United States Department of Interior agencies are required under N.D.C.C. ?? 20.1-02-18 and 20.1-02-18.1 to hold hearings before local county commissioners and receive the governor's final approval before purchasing land for multiple use, including wildlife benefits. Sarah Nordby from your office explained that the Bureau of Land Management (BLM) is proposing to sell some land that it currently owns and use the proceeds to purchase a ranch near Dickinson. The ranch is being purchased under the Federal Land Policy and Management Act of 1976 (FLPMA) 43 U.S.C.A. 1701 et seq. (West 1986). Ms. Nordby explained that no money from the Migratory Bird Conservation Fund is involved.

The state through its governor must consent to the acquisition by the United States of land or water in North Dakota for migratory bird reservations. N.D.C.C. ?? 20.1-02-18, 20.1-02-18.1 and 20.1-02-18.2.

In a letter dated August 9, 1990, to Burke County State's Attorney Jeffrey Peterson, former Attorney General Nicholas Spaeth concluded that the provisions of N.D.C.C. ?? 20.1-02-18 through 20.1-02-18.2 only apply to purchases of land under the Migratory Bird Conservation Act. A copy of that letter is enclosed.

Since the ranch is being purchased under authority of the FLPMA and is not being acquired with Migratory Bird Conservation Fund money, it is my opinion that

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the BLM does not have to comply with N.D.C.C. ?? 20.1-02-18 through 20.1-02-18.2. The FLPMA authorizes the Secretary of the Interior to purchase or exchange land without state or local consent. 43 U.S.C. ? 1715.

I am also enclosing a copy of a March 21, 1989, letter from former Attorney General Spaeth to Mountrail County State's Attorney Wade Enget which provides additional background on N.D.C.C. ?? 20.1-02-18 through 20.1-02.18.2. That opinion discusses the United States Supreme Court case North Dakota v. United States, 460 U.S. 300 (1983) and subsequent amendments to N.D.C.C. ?? 20.1-02-18 through 20.1-02-18.2. A copy of that case is also enclosed for your reference.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

jak/mh  
Attachments