

OPINION
63-237

December 3, 1963 (OPINION)

STATE HISTORICAL SOCIETY

RE: Exploration Permits

This office acknowledges receipt of a letter from Mrs. Aide dated July 23, 1963, and the same was referred to me for a reply.

The first paragraph of the letter reads as follows:

I would very much appreciate your opinion regarding the exploration permits as covered by Chapter 55-03-01, of the Century Code. It states in this paragraph 'on any lands in North Dakota' and in Chapter 55-03-02 it states 'no permit shall be granted* * * * on any land owned by the State.' This situation is ambiguous. Will you please clarify this matter."

Section 55-03-01 of the North Dakota Century Code is as follows:

PERMIT TO EXPLORE PREHISTORIC SITES AND DEPOSITS REQUIRED - APPLICATION - FEE. Any person, before making any investigation, exploration, or excavation of any prehistoric ruins, Indian mounds, graves or village sites for archaeological material, on any lands in North Dakota, first shall obtain a permit or annual license from the superintendent of the state historical society of North Dakota. Such permit or license shall be issued when an application has been filed with such officer setting forth:

1. The location of the site where applicant proposes to explore or excavate for such archaeological material; and
2. The qualifications and scientific fitness of the applicant to make such investigation, exploration, or excavation.

Each such application shall be accompanied by a filing fee of five dollars."

It is our opinion that the superintendent would prescribe certain standards and tests to determine the qualification and fitness of an applicant to make such investigation, etc. These tests and standards should be uniform and apply to all applicants alike.

However, in the case of state owned land to which reference is made in section 55-03-02 of the North Dakota Century Code, not only must the applicant meet the requirements of paragraph 2 in section 55-03-01 but in addition he must be prepared "to deliver to the state historical society one-half of all articles, fossil remains, and archaeological materials found and removed from such state land."

with reference to section 55-03-05 it appears clear from the reading

of that section that a landowner may explore on his own land, but if he engages someone else to do it, that person must hold a license or permit. Section 55-03-06 provides that the state shall retain title to all archaeological materials in instances where state owned land is conveyed or leased. Under these circumstances, the purchaser or lessee would not be entitled to explore for archaeological materials because the state retains title to the same.

An individual landowner could lease a site for exploratory purposes, upon terms satisfactory to the lessor and the lessee, but the person who would do the actual exploring would have to have a permit or license from the superintendent of the state historical society.

HELGI JOHANNESON

Attorney General