

OPINION
63-29

May 15, 1963 (OPINION)

BOARD OF ADMINISTRATION

RE: State Highway Building - Maintenance and Telephone Service

This will acknowledge receipt of your request for an official opinion as to the authority and responsibility of the State Highway Commissioner and the Board of Administration, concerning maintenance, repair and the furnishing of fuel and light for the state office building, also known as the State Highway Building, and also for providing local and "WATS" telephone service.

Chapter 360 of the 1959 Session Laws, which provided for the purchase of the building and land which was the former site of the Bismarck Junior College, has in part been incorporated into section 54-21-18 and section 54-21-19 of the North Dakota Century Code.

These sections are quite specific in providing for the control, management and maintenance of the state office building and for providing for fuel and light therefor, and it is our opinion that it is the duty and authority of the Board of Administration to perform such functions, and it is the further opinion of this office that the State Highway Commissioner has no duty nor responsibility to perform such functions or to make expenditure of highway funds for such purposes.

Chapter 48-07 requires that the Board of Administration maintain and operate a central telephone exchange in the "state capitol" and section 54-21-18 specifies that the state office building shall be considered a part of the state Capitol Building within the meaning of statutes relating to the custody, maintenance and control of the state Capitol Building and grounds.

This section can be construed to mean that the Highway Department Building is part of the Capitol Building and grounds.

This section can be construed to mean that the Highway Department Building is part of the Capitol Building and grounds as far as custody, maintenance and control are concerned. However, referring to section 48-07-02 of the North Dakota Century Code, which provides in part as follows; * * * * "Each office, department, or agency of state government or state institution not housed in the Capitol but located in the county of Burleigh or the county of Morton, may use such exchange if the head of such office, department, or institution and the board of administration jointly shall determine such service to be advantageous thereto", it is noted that for telephone exchange a joint determination can be made by the Board of Administration and the department.

It is, therefore, our opinion that the local telephone service for the state office building is the responsibility of the Board of

Administration. Under the provisions of section 48-07-02, it is our further opinion that the Board of Administration and the head of the department - in this instance the Highway Department, may jointly enter into a contract for such service.

As to repair and maintenance, which would include alterations of Capitol buildings, the Board of Administration is charged with the responsibility of performing such service. However, the Board of Administration has the responsibility of determining what repair and maintenance is to be accomplished. The extent of such service is, of course, limited to the appropriations made available to the Board of Administration for such activities.

We know, as a matter of custom and practice, that the Board of Administration in the years past required that the department furnish certain material, such as paint, and the board would furnish the manpower needed. This procedure apparently was adopted because adequate appropriation was not made to the Board of Administration and, in some instances, appropriation to the department was considered to have been made for such purposes. This office issued an opinion on this question addressed to Mr. Ralph Dewing, dated October 9, 1961, which is by reference incorporated herein and a copy of same is attached.

As such, until the complete transition of transferring as contemplated by law, the full responsibility of maintenance and matters incidental thereto, the Board of Administration will, out of necessity, be limited to the services it may perform to the appropriations made therefor.

It is therefore, our opinion that while the Board of Administration is charged with the responsibility of maintaining the Capitol Building, its responsibility is limited to the extent of appropriations made. If extraordinary maintenance undertakings are necessary and if funds for said department are not available through the Board of Administration, the Board of Administration may enter into separate agreement whereby the department will furnish some of the costs for maintenance and repair which would be accomplished under the supervision of the Board of Administration.

With regard to "wide area telephone service" however, the Board of Administration has authority to make the necessary contract with the telephone company under the provisions of Senate Bill No. 179 adopted by the Thirty-eighth Legislative Assembly, however, it is our opinion that the Highway Commissioner is responsible for paying to the Board of Administration for such service and such expenditure may be lawfully made from the state highway fund as reasonable administrative costs incidental to the construction and maintenance of highways. Such costs may be further allocated to construction or administration in accordance with the actual expenditures, as the case may be.

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