

**OPINION  
65-113**

March 11, 1965 (OPINION)

Mr. Walter R. Hjelle

Highway Commissioner

RE: Highways - Funds - Buildings

In your letter of March 11, 1965, you requested an opinion on the following question:

Can the State Highway Department participate in the cost of construction of certain defense buildings, such participation not to exceed \$10,000, for the purpose of enlarging them, without violating section 24-02-39 of the North Dakota Century Code?"

In addition, you pointed out that the purpose of these buildings was for the storage of certain maintenance equipment which would be used, pursuant to an agreement with the United States Air Force, for the removal of snow on various missile roads in the Grand Forks area. You further stated that the costs of construction and acquiring the site for these buildings was 100% reimbursable from the Air Force or Defense Department, and that the title would be vested in the State of North Dakota.

Section 24-02-39 provides:

HIGHWAY DEPARTMENT - BUILDING LIMITATION. - The state highway department shall not construct or cause to be constructed any building costing in excess of ten thousand dollars unless the department has received a specific appropriation from the legislative assembly for such purpose."

In determining whether or not your proposal would violate section 24-02-39, it is necessary for this office to determine the meaning of the word "costing" as used by the legislature in enacting this law. It has previously held that the word "cost", the root of the word we have under consideration, is incapable of a precise definition and, in this instance, it should be used in its ordinary sense.

The word 'cost' ordinarily indicates the price or part of it paid by the buyer to the seller as consideration for the sale of goods that which has to be given for at thing in order to procure it, especially the price paid."

City Ice Delivery Co. v. United States, 176 F. 2d 347 Words and Phrases, Vol. 9a, 584:

Word 'cost' is one capable of variable meaning and of larger or narrower construction according to subject matter and circumstances of particular case, and is sometimes used to express value of things and sometimes price paid for it." Single Metals, Inc. v. Industrial Management Corp. 253 P. 2nd

The dictionary defines cost as:

Cost, 1. The amount or equivalent paid, or given, or charged, or engaged to be paid or given for anything bought or taken in barter \* \* \*. 3. The expenditure or outlay of money, time, labor, or the like; \* \* \*. 6. Econ. \* \* \*; the cost of anything to community is called public cost, and is represented by the total amount of capital (used in its widest sense) consumed or rendered unavailable." Webster's New International Dictionary, Second Edition, 1934.

We believe, therefore, that the legislature in enacting section 24-02-39, had as its primary concern, a limitation upon the public cost, arising from the expenditure of public moneys for building purposes. We would then be concerned with what would constitute the actual cost to the Highway Department and hence the resulting depletion of public moneys. Since the purpose of section 24-02-39 is to preserve the corpus of the highway funds, the cost would be measured by the net reduction of these funds in the Highway Department, which is the direct result of the acquisition and construction of the building. If this reduction is \$10,000 or less, there would be no violation of section 24-02-39. For example, if the total cost of the building was \$50,000, of which sum the Air Force would reimburse the Highway Department the amount of \$42,000, the net cost to the Highway Department would be \$8,000. In such a situation the expenditure by the Highway Department is within the limitations imposed by this particular law.

The fact that the Highway Department would, in effect, acquire a building with a market value in excess of \$10,000 would be immaterial, since the limitation is upon the actual spending and not the market value of the building acquired. Such a ruling would prevent the department from exercising its business acumen and such is not the intent of this law.

Therefore, it is the opinion of this office that participation by the Highway Department in the construction of the building in the situation that is outlined here, would not violate section 24-02-39 so long as the department's actual cost does not exceed the sum of \$10,000.

HELGI JOHANNESON

Attorney General