

**OPINION  
65-54**

November 4, 1965 (OPINION)

The Honorable Ben Meier

Secretary of State

RE: Contractor - License - Oil Well Driller

This is in reply to your letter dated October 28, 1965, which reads as follows:

I respectfully request your opinion whether or not a person, co-partnership, corporation or association operating a business to drill oil and/or gas wells where the cost of the material and labor exceed \$500.00 comes within the definition of a contractor as set forth in Chapter 43-07 of the N.D.C.C. and should secure a Contractor's License as provided in Chapter 43-07."

Subsection 3 of section 43-07-01 of the North Dakota Century Code, as amended, defines the word "contractor" as follows:

- . A 'contractor' is any person, as hereinbefore defined, engaged in the business of construction, repair, alteration, dismantling, or demolition of bridges, highways, roads, streets, buildings, airports, dams, drainage or irrigation ditches, sewers, water or gas mains, water filters, tanks, towers, oil, gas, or water pipelines, and every other type of structure, project, development or improvement coming within the definition of real or personal property, including the construction, alteration, or repair of property to be held either for sale or rental, and shall include subcontractor, public contractor, and nonresident contractor;\* \* \*." (Emphasis supplied.)

By way of clarification, it should be noted at the outset that section 43-07-08, subsection 2, of the North Dakota Century Code, as amended, expressly excludes from coverage "any person who furnishes any fabricated or finished product, material or article of merchandise which is not incorporated into or attached to real property by such person so as to become affixed thereto." After reading these two sections together, it becomes apparent that before any structure, project, development or improvement can be covered by the Act, it must be done with reference to real estate and it must, upon completion, be distinguishable from the land itself.

The drilling of an oil well is not specifically enumerated in section 43-07-01, subsection 3. It is necessary to determine, therefore, whether it is covered by the phrase, "and every other type of structure, project, development or improvement coming within the definition of real or personal property."

It is quite clear that an oil well is a structure, project, development and improvement coming within the definition of real

property. Thus, inasmuch as an oil well is constructed with reference to real estate and is distinguishable from the land itself, it would seem that it is in the same class of things as those items specifically mentioned in subsection 3 of section 43-07-01. It is questionable, however, whether an oil drilling company drilling its own well would be deemed a "contractor."

To answer your question specifically, it is our opinion that one who engages in the business of construction, repair, alteration, dismantling, or demolition of oil wells is a "contractor" as defined by Subsection 3 of Section 43-07-01 of the North Dakota Century Code, amended.

HELGI JOHANNESON

Attorney General