

OPINION
66-68

May 31, 1966 (OPINION)

Mr. Lowell O. Tjon

State's Attorney

Ransom County

RE: Counties - Cities - Street Contracts

This is in reply to your letter of May 20, 1966, in regard to a proposed county-city contract for stockpiling gravel for the city.

You inform us that the county will use its present road equipment and gravel equipment to do the work and the gravel will be taken from and stockpiled in the pit belonging to the city. It is your understanding that the county is generally not to be in the contracting business and can only use its equipment on its own property or the public highways, or it may contract with the townships to do road work.

You call our attention to section 40-05-14 of the North Dakota Century Code providing:

"AGREEMENTS BETWEEN MUNICIPALITIES AND COUNTIES - CONSTRUCTION - MAINTENANCE. - The governing body of any municipality of ten thousand population or less and the boards of county commissioners of the several counties may enter into agreements for the construction and maintenance of streets within such municipalities by the boards of county commissioners. Said municipalities shall pay, on a reimbursable basis, such sums as are agreed upon."

You state your question as: whether this section is broad enough to include the right of the city and county to arrange for work between them such as this contemplated between the county and city for the stockpiling of gravel for the city streets.

From the facts you outline, we see no legal difficulty with the proposed project. This opinion is in accordance with the opinion you mention issued by this office under date of August 22, 1960, located at pages 29, 30, 31 and 32 of the Report of the Attorney General of North Dakota for July 1, 1960 to June 30, 1962. While we definitely do agree with your concept of the board of county commissioners not being in the general road contracting business, in view of the above quoted statute we believe a city meeting the qualifications therein prescribed can contract for part or all of street construction and maintenance with the board of county commissioners of the county in which it is located.

Under the question as stated, it is our understanding that the gravel stockpiled is to be utilized for street construction and maintenance by the city concerned. We express no opinion at this time as to the propriety of this type of arrangement where the gravel is not to be

utilized by the city concerned or where same is not to be used for street purposes.