

**OPINION
67-213**

March 23, 1967 (OPINION)

Mr. Geo. M. Thompson

Manager

Bank of North Dakota

RE: State - Computers - Approval

This is in response to your letter in which you state the following:

"The Bank of North Dakota has been considering installing a computer system and had entered into a contract with the Burroughs Company for the installation of same.

"Inasmuch as Senate Bill No. 89 prohibits the purchase of any computer system by any state department or agency, I would appreciate your opinion as to whether or not the Bank should consider further action in this matter, or if the contract should be cancelled at this time."

Senate Bill No. 89 of the Fortieth Legislative Assembly becomes effective on July 1, 1967, and is designed to assure an integrated data processing system within the state of North Dakota. It recognizes the need of having equipment which is compatible with other equipment already in use. It is also designed to prevent the acquisition of data processing equipment which may be used in a limited capacity by one department which cannot make full use of such equipment. Economy is also a factor which is to be considered in obtaining new data processing equipment.

Section No. 1 of the bill can be considered as legislative policy, intent and findings of fact. This section must be taken into consideration in construing the provisions contained in Sections No. 2 and No. 4 of the Act. It should be noted that Senate Bill No. 89 does not prohibit completely the purchasing, renting or leasing of data processing equipment. It provides that any department, agency or institution before acquiring new equipment shall first obtain the approval of the Director of Accounts and Purchases. Under subsection No. 4, the Director of Accounts and Purchases may approve the acquisition of new or additional data processing equipment if the need exists and the acquisition cannot be postponed until after the completion of the study provided for in the Act, or if the best interest of the state would not be served by delaying the acquisition. It also provides for approval when the work or program cannot be carried out by existing equipment during the time the study is being conducted.

We recognize that the Bank and its operations are under the control and supervision of the Industrial Commission comprised of constitutional elective officers. We presume that the Industrial Commission would not authorize any activity which would be contrary to the desired overall accomplishments of Senate Bill No. 89.

Without specifically deciding the question whether or not the Bank is included or exempt from the provisions of Senate Bill No. 89, it is our opinion that the Bank need not cancel its contract, nor do we believe that the Bank is required to defer any further action on its acquisition of data processing equipment until the study is completed. Under the strict provisions of Senate Bill No. 89 the Bank can purchase any equipment it deems necessary before July 1, 1967, however, the Industrial Commission and the Bank should recognize the intent and design of Senate Bill No. 89. Even if the equipment is to be obtained after July 1, 1967, and before the study is completed, we do not envision any serious problem in obtaining the approval of the Director of Accounts and Purchases if it can be established that the equipment is urgently needed and that it will serve to the best interest of the state, and that a delay of acquiring such equipment is urgently needed and that it will serve to the best interest of the state, and that delay of acquiring such equipment would cause substantial damage to the state.

If the Bank has entered into a legal contract, Senate Bill No. 89 could not destroy the effects of the contract - if it did, it could be invalid legislation.

It is therefore our opinion that if the Bank has need for such equipment it may, with the approval of the Industrial Commission, proceed to acquire it before July 1, 1967, or in the alternative after July 1, 1967, the Bank and the Industrial Commission must illustrate to the Director of Accounts and Purchases the need for such equipment and that same will serve to the best interest of the state and is necessary to carry out the work or program of the Bank, and that a delay would cause substantial damage to the effectiveness of the Bank and its program and functions.

HELGI JOHANNESON

Attorney General