

**OPINION
67-243**

June 19, 1967 (OPINION)

Honorable Ben Meier

Secretary of State

RE: State - Public Buildings - Submission of Plans to Construction S

Your request for an opinion dated June 12, 1967, reads as follows:

Section 54-21-17 of the N.D.C.C. provides for a Construction Superintendent and outlines his duties.

I respectfully request your opinion as to whether or not all state agencies are required to submit plans and specifications to the Superintendent of Construction for final approval before the letting of bids."

Section 54-21-17, as amended, of the North Dakota Century Code provides as follows:

CONSTRUCTION SUPERINTENDENT - APPOINTMENT - DUTIES. The secretary of state may employ a qualified construction superintendent for the purpose of giving professional advice in purchasing, planning, setting depreciation schedules, evaluation for insurance and assistance in and coordinating the construction of buildings by departments, institutions, and agencies of the state. A person so employed shall possess a minimum of ten years' experience in construction methods and procedures. The person so employed may be called upon by a state agency to approve, before the letting of bids, plans and specifications for any building construction, and may maintain such surveillance during construction as might be necessary to insure insofar as is practicable that:

1. The building will be suitable to meet the needs it is intended to serve;
2. Plans and specifications will meet any construction requirements of the state and assure economical construction consistent with sound construction practices;
3. Expenditures for the construction are kept within the limits of legislative appropriation; and
4. Plans and specifications will harmonize with a master plan for future growth and development of any state institution in regard to matters of architectural style.

The provisions of this section shall also require compliance by the board of higher education and all other agencies of the state of North Dakota." (Emphasis supplied.)

As can be seen by the emphasized words of the above quoted statute, the employment and use of a state construction superintendent is permissive rather than mandatory. The last paragraph of the statute would seem to be mandatory, except for the fact that it refers to the prior provisions of the statute which are merely permissive.

Therefore, it is our opinion that all state agencies are not required to submit plans and specifications to the superintendent of construction for final approval before the letting of his bids. We do believe, however, that such a prior approval by the state superintendent of construction would be advisable before letting the bids on any state building.

HELGI JOHANNESON

Attorney General