

OPINION  
69-36

August 4, 1969 (OPINION)

Mr. Roy A. Neste

City Attorney

Park River, North Dakota

RE: Cities - Building Contracts - Includes TV Towers

This is in response to your letter in which you state that the City of Park River is contemplating the installation of a TV tower. You state you are concerned as to whether or not this tower would be governed by the provisions of Chapter 48-02 of the North Dakota Century Code.

Section 48-02-02, in substance, requires that procurement of the plans, drawing and specifications be from a licensed architect, if the cost of the building exceeds \$12,000.00. This provision applies where a governmental body alters, repairs or constructs a building. The question then is whether or not a TV tower constitutes a building as such term is used in Section 48-02-02, and throughout Chapter 48 02.

You also advise that the matter to be constructed will be an antenna tower.

The term "building" as found in the above mentioned section is not a work of art and, therefore, takes on the meaning which is attributable to such term. Webster's Dictionary defines the term "building" as follows:

building, n. 1. A structure which is built, esp. on a space of land and for permanent use, as a house, factory, etc. Abbr. bldg. 2. The art or the work of assembling materials into such structures."

Because of this definition it becomes necessary to also examine the meaning given to the term "structure", which is also defined in Webster's Dictionary as follows:

structure, n. \* \* \* 1. Manner of building; form; construction. 2. Something constructed or built, as a building, a dam, a bridge. 3. Arrangements of parts, or organs, or of constituent tissues or particles, in a substance or body. 4. Figuratively, the interrelation of parts as dominated by the general character of the whole; as, the STRUCTURE of society. - Syn. Constitution, composition, make-up."

12 C.J.S. on page 378 defines the term "building" as follows:

\* \* \* the noun 'building' is derived from the Anglo-Saxon 'bold,' meaning a dwelling; that the term is comprehensive, generic, and, in its use, may be ambiguous, having no

universal, inflexible meaning which will apply to all cases, but depending for its meaning upon the peculiar facts and circumstances of each particular case, the intention of parties or the aim of a particular statute. \* \* \*."

To determine the meaning of the word "building" in this instance, it is necessary to examine the purpose and intent of Chapter 48-02.

It becomes apparent in reviewing the provisions of Chapter 48-02 that the Legislature intended to provide certain procedures to be followed in the erection or construction of any building, the cost of which exceeds \$12,000.00. We do not believe that the Legislature intended to use the term "building" in a limited sense. We believe that the Legislature used the term in its broad sense and intended to give a broad application to this term. The law in question was designed to protect the public from faulty structures or buildings and wished to provide a method whereby the public would be assured that the building or structure will meet the minimum basic requirements as to structural soundness and other factors, including safety.

The Supreme Court of Oklahoma in the case of Griffin v. Holand, 131 Pac. 2d. 113, held that a water tower was a building and observed that the term "building" has a variable meaning and takes on its true meaning only from the context from which it is used.

It is, therefore, our opinion that the term "building" as it is used in Chapter 48-02 includes structures such as a TV tower, if the cost of erection exceeds \$12,000.00 and, as such, comes within the provisions of Chapter 48-02 of the North Dakota Century Code.

HELGI JOHANNESON

Attorney General