

**OPINION
70-79**

January 5, 1970(OPINION)

Mr. W. P. Sebens
Executive Secretary
State Soil Conservation Committee

RE: Contractors - Licenses - Soil Conservation District

This is in reply to your letter of December 31, 1969, relative to the necessity of a soil conservation district to secure a contractor's license. You note the districts own tree planting machines and, in some cases, heavy equipment is also owned and operated by the districts for such practices as applying drainage and digging waterholes. Other districts depend upon local contractors for this kind of work. Where tree planting is concerned, the districts own two tree nurseries and the districts purchase their trees from their own nurseries. In planting the trees, the districts sometimes hire contractors to do this work, but in no case does a contractor bid to plant the trees on a farm for a certain given sum, nor do they bid a given sum in a case where dirt is moved for a certain waterhole. The bid or set price is so much per cubic yard and after the job is completed the size of the excavation is estimated and a bill rendered.

In view of the above facts you ask the following questions:

1. Is a Soil Conservation District required to purchase a contractor's license?
2. If a District should contract for any work to be done by an individual or firm in excess of \$500.00, and they ask for bids and then make certain that the individual or firm they are contracting with is a legally licensed contractor, could a District legally continue their operation without a contractor's license?"

In the first instance we would note Section 43-07-02 of the North Dakota Century Code, as amended, requires every person engaging in the business of a contractor, when the cost of the contract exceeds \$500.00, to have a contractor's license. However, we also note the provisions of Section 43-07-08(1) of the North Dakota Century Code, as amended, which provides:

EXCEPTIONS. This chapter shall not apply to:

1. Any authorized representative or representatives of the United States government, the state of North Dakota, or any county, municipality, irrigation district, reclamation district or other political corporation; or

* * * "

This exception excludes any public agency performing work which would ordinarily require a contractor's license. The contractor's law, therefore, contemplates a contract in which a private contractor is performing a contract for a private person or some governmental agency rather than those instances in which the work is performed by the governmental agency. In response to your first question, it is our opinion that when work is performed by employees of a soil conservation district on behalf of the district, no contractor's license is required. We assume, of course, that such employees are, in fact, employees paid on a yearly, monthly, weekly or hourly basis, are not paid according to the specific project upon which they are working, and are using equipment belonging to the district. If the employees are paid according to the project or use of their own equipment, it is possible such persons could be construed as contractors rather than employees. In such instance the "employees" would be required to have a contractor's license.

With regard to your second question, the person performing work for the district or for a private individual would be required to have a contractor's license if the amount of the work exceeded \$500.00. However, the district itself would not be required to have a contractor's license.

HELGI JOHANNESON
Attorney General