

OPINION
71-1

June 16, 1971 (OPINION)

Mr. Corliss F. Nelson
State Superintendent of Construction
Secretary of State's Office

RE: Administrative Agencies - Superintendent of Construction - Proce

This is in response to your letter in which you call our attention to House Bill 1147 enacted by the 1971 Legislature which directs you as construction superintendent to adopt Standard ANSI-119.1 by the American National Standards Institute. The same bill also authorizes changes or additions to such standards after July 1, 1971.

You then request our opinion whether or not the Administrative Practices Act (24-32 North Dakota Century Code) needs to be followed in initially adopting the above mentioned standards or amendments.

House Bill 1147 instructs you to adopt Standard ANSI-119.1 and further directs that same be adopted on July 1, 1971. The manner in which the Legislature directed you to adopt these standards leaves no room for judgment in the first instance. The direction is to adopt such standards without qualification which means to adopt them initially without modification.

The purpose of submitting rules and regulations to the Attorney General is to determine whether or not there is legislative authority for such proposed rules. In this instance the Legislature has directed certain standards to be adopted which eliminates the question whether or not you have authority to adopt the rules.

It is therefore our opinion that you need not follow the Administrative Practices Act. (28-32 North Dakota Century Code) in initially adopting Standard ANSI-119.1 on July 1, 1971.

It is our further opinion that any amendments, changes or additions to such standards, whether initiated on your own or suggested or actually developed by the American National Standards Institute after the initial standards have been adopted should be submitted to the Attorney General for review before same are adopted. In arriving at this conclusion we are only concerned that the revisions, amendments, additions, etc., are in conformity with the basic laws on the subject. By so concluding, we are not making any determination on the question of whether or not the State Superintendent of Construction is an administrative agency as defined in Chapter 28-32.

We also wish to call your attention before any changes, additions, amendments or modifications may be accomplished, you are required to consult with the State Electrical Board, State Plumbing Board, State Fire Marshal, and the North Dakota Mobile Home Association.

HELGI JOHANNESON

Attorney General