

**OPINION  
73-158**

April 16, 1973 (OPINION)

Mr. F. C. Rohrich

State's Attorney

Emmons County

Linton, ND 58552

Dear Mr. Rohrich:

This is in response to your letter in which you ask whether or not the county has to charge other political subdivisions for the use of county road equipment and if they do, must the charge be the minimum rate as put out by the North Dakota Highway Department.

Section 24-05-04.1 provides as follows:

"24-05-04.1. County not to lease its equipment for less than cost of operation. No county, city, or township shall lease, rent, or enter into a contract or agreement for the use of any road construction or maintenance equipment belonging to any county, city or township on other than county, city or township roads or projects at a rate which is less than the current equipment rental rates adopted by the North Dakota state highway department."

This section was enacted by chapter 263 (House Bill 359) 1969 Session Laws.

The raw language is subject to more than one construction. The two constructions arise out of the phrases "on other than county, city or township roads or projects" and "at a rate which is less than the current equipment rental rates adopted by the North Dakota state highway department". Both are qualifying and modifying phrases or clauses. The language is couched in a negative term or more properly in a prohibitory fashion.

The one construction would be that the county and city may not lease, rent or enter into any contract or agreement for the use of any construction or maintenance equipment on other than county, city or township roads or projects, and that the rate for such rental would have to be not less than the current equipment rates adopted by the North Dakota State Highway Department.

The other construction is that the county, city or township may lease or rent its equipment to anyone, but the rate must not be less than the equipment rental rates adopted by the North Dakota State Highway Department, but the minimum rental rates does not apply if the equipment is leased or rented to a county, city or township for road projects.

In order to determine the true intent of the legislature, it is

necessary to examine the title, all pertinent and extrinsic material available.

House Bill 359 as initially introduced contains the following title:

"For an Act to prevent counties from leasing their county road machinery for less than the cost of operation of the equipment."

The initial version of House Bill 359 provides as follows:

"Section 1. County not to lease its equipment for less than cost of operation. No county shall lease, rent, or enter into a contract or agreement for the use of any road construction or maintenance equipment belonging to the county on other than county roads or projects at a rate which is less than the cost of operation of such equipment."

The initial bill was amended by adding the words "city or township" in the appropriate places and by substituting "current equipment rental rates adopted by the North Dakota State Highway Department" for "the cost of operation of such equipment". The minutes of the committee on political subdivisions to which the bill was referred are not persuasive in determining the basic purpose and intent of the bill. One county commissioner stated as reported in the minutes, that "the county tried to help the people out in the past and that now they could not because they did not have sufficient funds. If this bill were passed this could let them out of this type of work."

Reference was also made by a representative that House Bill 468 which pertained to a similar subject matter would be "in direct opposite" to this bill. House Bill 468 was ultimately passed and is now section 11-11-55 of the North Dakota Century Code. It provides as follows:

"11-11-55. County may agree to make improvements on private roads - Costs of improvements to constitute lien on real estate. The board of county commissioners shall have the power to enter into agreements with private landowners for the purpose of making improvements on private roads. The board shall charge the landowner for the improvements made pursuant to such agreement, and such charges shall constitute a lien upon the real estate of the landowner in the same manner as personal property taxes are made a lien upon real estate as provided in chapter 57-22."

It should be noted that this section authorizes the county commissioners to enter into agreements with private land owners for the purpose of making improvements on private roads and making a charge for such improvement. This does not involve the leasing or renting of the county equipment to the land owner but rather for a completed project. Thus, while there is a relation between the two statutes, they are not necessarily in conflict.

The bill analysis of House Bill 359 states the following:

"Prohibits counties from leasing or renting out road construction or maintenance equipment for use on other than

county or township roads at a rate less than the current rental rates of the State Highway Department."

Unfortunately, the bill analysis is subject to the same two versions of construction.

Section 24-05-04.1 in itself is not a grant of authority except possibly by implication. This section seems to assume that a county, city or township has the authority to rent or lease its road construction or maintenance equipment. We are not aware of any other statutory provision which specifically grants such authority.

Section 185 of the North Dakota Constitution permits the state, county or city to engage in any industry, enterprise or business not prohibited by Article 20 of the North Dakota Constitution. However, section 185 requires enabling legislation to implement its provisions. Be that as it may, the language of section 24-05-04.1 seems to take for granted that the county, city or township has the authority to lease or rent its road construction or maintenance equipment. The remaining questions now are "(1) is such rental or leasing limited to other counties, cities or townships for road purposes?" or "(2) may such equipment be rented to or leased to anyone?" and "what rate if any under either instance must be charged?".

After having considered all of the extrinsic material available, it becomes apparent that this is an instance where considerable emphasis and weight must be given to the title of the act. In doing so, it becomes apparent that the legislature was primarily concerned with the rental rate rather than to whom the equipment may be leased or rented.

It is therefore our opinion that section 24-05-04.1 requires that the county, city or township, in leasing or renting its road construction or maintenance equipment, must charge a rate which is not less than the current equipment rental rates adopted by the North Dakota State Highway Department unless such leasing or renting is to another county, city or township, at which time the minimum rental rates would not be applicable. Whenever the rental is to another city, county or township, the rate may be negotiated.

Sincerely yours,

ALLEN I. OLSON

Attorney General