

**OPINION  
74-162**

January 31, 1974 (OPINION)

Mr. Walter R. Hjelle  
State Highway Commissioner  
State Highway Building  
Bismarck, ND 58501

Dear Mr. Hjelle:

RE: Section 24-05-04.1, N.D.C.C. Equipment Rental Rates

This will acknowledge your request for an opinion concerning the above referenced statute. Section 24-05-04.1 was introduced as House Bill 359 in the Forty-first Legislative Assembly and appears as Chapter 263 of the Session Laws of 1969. The Act, including the title reads as follows:

Leasing of Political Subdivision's

Road Equipment

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

Be it enacted by the Legislative Assembly of the State of North Dakota:

Section 1. County not to lease its equipment for less than cost of operation. No county, city or township shall lease, rent, or enter into an 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.

Approved March 26, 1969.

Your letter states that the State Highway Department adopts two sets of equipment rental rates and you describe one as being a cost rate for its own accounting records and for assessing costs in joint projects with political subdivisions and that when an item of equipment has been fully depreciated in your records, these cost rates no longer include further depreciation.

You advise that the other set is a force account rate, based upon national averages and include reasonable profit. These rates, according to your letter, are used by the department in paying for contract work where no bid item price is applicable.

We agree with you that neither of these adopted rental rate by a

county. The statute, as directed in the title of the Act, prevents counties from leasing their county road machinery for less than the cost of operating the equipment. A county may not use the State Highway Department's costs for its own. Likewise, it may not substitute the State Highway Department force account rates for a county rental rate which they must establish from their own current costs of operation.

If a county finds that its current costs are less than the cost of the State Highway Department, its rental rate should be increased to at least the amount shown on the list adopted by the State Highway Department, which reflects department costs. The average contractor costs, as reflected by the State Highway Department's force account rates, can be useful to a county that wishes to establish its own rental rates.

We thank you for an additional statute, passed by the same session of the Legislative Assembly that enacted the rental rate statute, is of particular pertinence to this subject. That is, Section 11-11-55, North Dakota Century Code, which was introduced as House Bill 468 and appears as Chapter 132 of the Session Laws of 1969. That Act, including its title reads as follows:

#### County Improvement of Private Roads

An Act to provide that county commissioners shall have the power to enter into agreements with private landowners for the purpose of making improvements on private roads, and to provide that the costs of such improvements shall constitute a lien upon the real estate of the landowner.

Be it enacted by the Legislative Assembly of the State of North Dakota:

Section 1. 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 of the landowner in the same manner as personal property taxes are made a lien upon real estate as provided in chapter 57-22.

Approved March 25, 1969.

We concur in your suggestion that you provide a copy of this opinion to the counties with the two sets of rates adopted by the State Highway Department.

Very truly yours,

ALLEN I. OLSON

Attorney General