

**OPINION
76-161**

December 13, 1976 (OPINION)

Mr. Leonard E. Larsen, Manager

Fire and Tornado Fund

State Capitol

Bismarck, ND 58505

Dear Mr. Larsen:

This is in response to your letter of November 29, 1976, wherein you inquire of this office as to whether or not the State Fire and Tornado Fund must comply with Section 11-11-28 of the North Dakota Century Code which requires the filing of either a certified check or bond on the submission of a bid when the Fire and Tornado Fund submits a bid on public buildings pursuant to the provisions of Section 26-24-09 of the North Dakota Century Code. Your inquiry is based on the action of the Cass County Commissioners' refusal to consider the Fire and Tornado Fund bid at a recent bid to opening meeting as the Fund did not provide them with a bidders bond as requested in their specifications.

Chapter 26-24 of the North Dakota Century Code deals with the procurement of insurance against loss by fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosion, riot attending a strike, aircraft, smoke, vehicles, or any other risk of direct physical loss on public buildings. Prior to 1967, the Fire and Tornado Fund was the exclusive vehicle for insuring public buildings against the losses mentioned previously with the exception that certain property of the State and the Bank of North Dakota was excepted (see Section 26-24-05, N.D.C.C.) and that township and school districts had an option as to insuring certain property located outside of the incorporated limits of a city (see Section 26-24-06, N.D.C.C.).

However, during the 1967 Legislative Session (S.R. 1967, ch. 235, Section 2), Section 26-24-09 was amended to read as follows:

Upon application the commissioner shall provide for insurance against loss by fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosions, riot attending a strike, aircraft, smoke, vehicles, or any other risks of direct physical loss, all in the manner and subject to the restrictions of the standard fire insurance policy and standard endorsement, and no other hazards, in the fund, on all buildings owned by the state, state industries, and political subdivisions of the state, and the fixtures and permanent contents in such buildings, to the extent of not to exceed the insurable value of such property, as such value is determined by the commissioner and approved by the officer or board having control of such property, or, in the case of disagreement, by

approval through arbitration as hereinafter provided.

All public buildings owned by the political subdivisions of the state, in lieu of coverage provided for in this section, may at the option of the governing body of the political subdivision be insured on the basis of competitive sealed bids, through the fire and tornado fund which shall be invited to submit a sealed bid or private insurance companies licensed to do business in this state, against damage resulting from hazards, which hazards shall include but shall not be limited to those types of hazards that may be insured against by the fund. The governing body may reject any or all such bids.

All public libraries owned by the state or the political subdivisions of the state may, in addition to the coverage provided for in this section, be covered against damage through vandalism. If such coverage cannot be extended to the public libraries situated within this state, such libraries may contract for such coverage with private insurance companies, provided that such coverage meets the recommendations of the insurance code of the American Library Association. (Emphasis added.)

The underlined language is the language added by the 1967 amendment. The thrust of the amendment was to allow a political subdivision at its option, to call for competitive sealed bids for the coverages provided in that section through the Fire and Tornado Fund or private insurance companies admitted to do business in this state. Further, private insurance companies could include with their bid additional coverages outside the scope of Section 26-24-09.

We do feel that the above-quoted language is quite clear. It explicitly states that the Fire and Tornado Fund "shall be invited to submit a sealed bit" which makes it mandatory upon political subdivisions to invite the Fund to submit a sealed bid for the coverages provided for in that section. Since the Legislature directed political subdivisions to invite the Fire and Tornado Fund to submit a bid, and from a review of the other provisions of Chapter 26-24, which imposed no conditions upon the Fund in submitting its bid, it is our conclusion that the political subdivision cannot impose the condition that the Fund must submit a bidders bond in order for its bid to be considered.

We trust this answers your inquiry.

Sincerely,

ALLEN I. OLSON

Attorney General