

**OPINION  
76-196**

May 19, 1976 (OPINION)

Mr. Milton O. Lindvig  
Secretary-Treasurer  
North Dakota Board of Water Well Contractors  
State Office Building  
900 East Boulevard  
Bismarck, ND 58501

Dear Mr. Lindvig:

This is in response to your letter of May 12, 1976, wherein you inquired of this office whether a water well contractor must secure a bond pursuant to Section 43-35-14 and a separate bond pursuant to Section 43-07-11.

You inform us that Section 43-35-14 provides that as a condition to the receipt of a water well driller's certificate, a qualified applicant must execute a surety bond in the amount of one thousand dollars conditioned upon the "faithful performance of all water well contracts undertaken by him and the strict compliance with the provisions of this chapter."

You also draw our attention to Section 43-07-11, which provides as follows:

43-07-11. Contractor's bond - Requirements. - Every contractor as hereinbefore defined shall be required to execute and file with the application for license required by this chapter a good and valid bond issued by a surety company authorized to do business in this state or, in the case of class D contractors only, a personal bond with two sureties who are acceptable to the registrar and who are residents of the state of North Dakota. Every such bond for a class A contractor shall be written in the amount of two thousand dollars; bonds for class B, C, and D contractors shall be in the amount of one thousand dollars, each running to the state of North Dakota and conditioned upon the payment of all taxes, including the premiums under the Workmen's Compensation Law and contributions due under the Unemployment Compensation Law of the state of North Dakota, all use taxes required to be paid by the contractor to the state of North Dakota and all income taxes withheld or required to be withheld from employees pursuant to chapter 57-38, which may accrue to the state of North Dakota or the political subdivisions thereof on account of the execution and performance of the construction contract or subcontract; provided that any bond required by this section shall be in addition to any bond required by the provisions of section 48-01-05 and shall also be in addition to the obligation imposed by the provisions of section 57-40.2-14 upon a surety company to the state of North Dakota. Every contractor, as hereinbefore defined, upon making application for renewal of his license shall not be required to furnish a contractor's bond; however, the secretary of state as registrar shall not issue a

certificate of renewal to any contractor upon notification by any department or agency of the state or political subdivision thereof, any secrecy provisions contained in the North Dakota tax laws notwithstanding, that the contractor has not paid a tax or other obligation presently due to the state of North Dakota or its political subdivisions. Upon notification that the contractor has been delinquent in the payment of any tax or other obligation to the state of North Dakota or the political subdivisions thereof, the secretary of state shall require the bond specified herein prior to the renewal of the license.

Finally, you state, by way of conclusion, that "each bond is required by statute for a specific purpose. Therefore, it is the opinion of the board that one bond will not satisfy both purposes."

As to the applicability of contractor's bonding requirement contained in Section 43-07-11, quoted in full above, we note that that section applies to "contractors", defined in subsection 3 of Section 43-07-01 as any person ". . . engaged in the business of construction, repair, alteration, dismantling or demolition of bridges, highways, roads, streets, buildings, airports, dams, drainage or irrigation ditches, sewers, water or gas mains, water filters, tanks, towers, oil, gas, or water pipelines, and every other type of structure, project, development or improvement coming within the definition of real or personal property, including the construction, alteration, or repair of property to be held either for sale or rental, and shall include subcontractor, public contractor, and nonresident contractor;" (emphasis added)

While the drilling of water wells is not specifically included within those types of construction or improvement set out in the above section, we believe that water well drilling is an improvement to real property within the meaning of the language underlined in the section above. We are, therefore, of the opinion that the provisions of Section 43-07-11 apply and that a water well contractor must execute a contractor's bond pursuant to the provisions of that section.

As you pointed out in your letter, Section 43-35-14 requires that a bond be executed specifically by those persons intending to do water well contracting. This section provides as follows:

43-35-14. Bond required. - Before receiving a certificate as a water well contractor, a qualified applicant shall execute and deposit with the board a surety bond in the amount of one thousand dollars conditioned for the faithful performance of all water well contracts undertaken by him and the strict compliance with the provisions of this chapter.

In examining the two sections of law requiring bonds, which we find applicable to water well contracting, it is apparent at once that neither section makes note of any other bonding requirements of law. That is, neither section requires coordination of its bonding requirement with any other provision of state law; neither section provides that the fulfillment of one bonding requirement will satisfy the other. Had the Legislative Assembly intended such a result, it could have so provided. Consequently, we must assume that the two

bonding requirements are to be separately applied and separately complied with.

Moreover, we would agree with your statement to the effect that each of the bonds fulfills a separate and distinct purpose. The purpose of that bond required by Section 43-07-11 is to guarantee the payment of various kinds of taxes and state withholding. The purpose of that bond required by Section 43-35-14 is to ensure that any contract is carried out in compliance with the requirements of Chapter 43-35 (none of which is concerned with state taxes or withholding) and, by reference, the regulation of the state Department of Health on standards of well drilling. The result is that the "tax payment bond" may not be revoked and cashed for a violation of Chapter 43-35, nor may the "drilling bond" be revoked and cashed for a violation of the contractor's failure to pay state taxes required under other provisions of state law. Thus, the obtaining of only one of the bonds by a water well contractor would not in any way provide the state or the party contracting for the well with the protection required under the conditions of the other bond.

Thus, we conclude that separate bonds must be obtained by a water well contractor pursuant to the provisions of Sections 43-07-11 and 43-35-14.

Sincerely,

ALLEN I. OLSON

Attorney General