

Office of the Attorney General
State of North Dakota

Opinion No. 82-69

Date Issued: October 15, 1982
Requested by: Jeffrey J. Peterson
Burke County State's Attorney

--QUESTION PRESENTED--

Whether a county is entitled to payments made for the right to conduct seismograph operations on county rights-of-way acquired for highway purposes.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a county is entitled to all payments made for the right to conduct seismograph operations on county rights-of-way.

--ANALYSIS--

Section 24-01-32 of the North Dakota Century Code provides that all property acquired or taken by the state or its political subdivisions for highway purposes are held without any rights or interest to the oil, gas or fluid minerals underlying the land. My interpretation of this provision of law is that a county is not a mineral owner with respect to property obtained for public highways.

Without more, Section 24-01-32, N.D.C.C., would indicate that a county is not entitled to payments made by a seismograph company to engage in mineral exploration. Chapter 38-11.1, N.D.C.C., however, was enacted to compensate surface owners for damages caused by the exploration and development of oil and gas. The purpose of this chapter is to provide money damages for losses sustained by surface owners as a result of exploration and drilling operations. Section 38-11.1-02, N.D.C.C.

Presuming the payments made for the right to conduct seismograph operations in a county were made pursuant to Section 38-11.1-04, N.D.C.C., those payments are made directly to the surface owner without regard to whether the mineral estate was severed from the surface estate. Accordingly, a county as the surface owner, is entitled to the payments made for the right to conduct seismograph operations on county rights-of-way.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald
Attorney General