

Office of the Attorney General
State of North Dakota

Opinion No. 86-30

Date Issued: October 9, 1986

Requested by: Karlene Fine
Secretary to the North Dakota Industrial Commission

--QUESTION PRESENTED--

Whether N.D.C.C. § 38-08.1-03.1 authorizes the North Dakota Industrial Commission to accept cash in lieu of a bond issued by a surety company to guarantee against loss of payments for damages as a result of geophysical operations within the state.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that N.D.C.C. § 38-08.1-03.1 does not authorize the North Dakota Industrial Commission to accept cash in lieu of a bond issued by a surety company to guarantee against loss of payments for damages as a result of geophysical operations within the state.

--ANALYSIS--

The law in the state of North Dakota with regard to the regulation of geophysical operations is codified as N.D.C.C. Ch. 38-08.1. A review of that chapter reveals that any 'person' desiring to engage in geophysical operations in the state of North Dakota must file with the Industrial Commission 'a good and sufficient surety bond.' N.D.C.C. § 38-08.1-03.1(1). The inquiry here is whether this language authorizes the Industrial Commission to accept cash in lieu of a bond.

Since the Industrial Commission has not promulgated rules to implement the provision of N.D.C.C. Ch. 38-08.1, the task of determining whether accepting cash will satisfy the requirements of the law is limited to an examination of the statute. N.D.C.C. § 38-08.1-03.1(1) addresses the requirements of the filing of a surety bond with the Industrial Commission. The section in part provides:

A person desiring to engage in geophysical exploration in this state shall also file with the industrial commission a good and sufficient surety bond in the amount of fifteen thousand dollars for a single geophysical crew or a blanket surety bond in the amount of thirty thousand dollars for all geophysical crews operating within the state for such person.

Nothing in this language specifically requires that the surety bond to be filed with the Industrial Commission must be in the form of a bond by a surety company. Furthermore, the language does not specifically preclude the Industrial Commission from accepting cash.

However, by reviewing all of N.D.C.C. § 38-08.1-03.1(1), one concludes that the statute does not grant the industrial Commission the authority to accept cash in lieu of a bond by a surety company. N.D.C.C. § 38-08.1-03.1(1) provides that bonds filed with the Industrial Commission 'shall cover all geophysical exploration conducted within one year of the date the bond is issued and shall be automatically renewed unless the [I]ndustrial [C]ommission and the person covered thereby receive notice sixty days prior to any anniversary date of the surety's intent not to renew the bond.' N.D.C.C. § 38-08.1-03.1(1) goes on to state that '[i]n the event the surety does not renew the bond, the surety's liability under the bond shall cease six years from the date that geophysical exploration or reclamation covered by the bond was last conducted in the state.' This language clearly implies that the legislative assembly intended that the only bonds which may be filed with the Industrial Commission, pursuant to N.D.C.C. Ch. 38-08.1, are bonds issued by surety companies.

It is unnecessary, however, for this office to base its decision solely on the language of N.D.C.C. § 38-08.1-03.1(1). N.D.C.C. § 38-08.1-04.1, similarly, implies that accepting cash in lieu of a bond by a surety company is beyond the ambit of the statutory authority of the Industrial Commission. N.D.C.C. § 38-08.1-04.1 in part provides:

1. * * * A person may not engage in geophysical exploration activities in any county without having first obtained a geophysical exploration permit from the county commission.

2. The permit shall show, at a minimum:

a. * * *

b. * * *

c. * * *

d. That a good and sufficient surety bond has been filed by the person, naming the surety company and giving its address.

N.D.C.C. § 38-08.1-04.1 provides, as a prerequisite to obtaining a geophysical exploration permit from the county commission, a showing that a surety bond has been filed with the Industrial Commission and providing the county commission with the name and address of the surety company that issued the bond.

Considering N.D.C.C. § 38-08.1-04.1, it is clear that construing N.D.C.C. § 38-08.1-03.1 to authorize the Industrial Commission to accept cash in lieu of a bond issued by a surety company would serve no useful purpose. In order to satisfy the requirements of N.D.C.C. § 38-08.1-04.1, a person must demonstrate that a bond issued by a surety company is on file with the Industrial Commission. If N.D.C.C. § 38-08.1-03.1 is read in pari materia with N.D.C.C. § 38-08.1-04.1, it can only be concluded that the Industrial Commission does not have the authority to accept cash in lieu of a bond issued by a surety company to guarantee against loss of payment for damages as a result of geophysical operations within the boundaries of the state of North Dakota.

--EFFECT--

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

Nicholas J. Spaeth

Assisted by: Lawrence Bender
Assistant Attorney General