

**OPINION**  
**45-141**

June 16, 1945 (OPINION)

HIGHWAY DEPARTMENT

RE: Emergency Powers

Pursuant to your request, I am herewith submitting answers to your four questions:

1. Does a landowner, after sale of some of his land to the highway department or the state for highway purposes, have to pay taxes on that portion of the land sold and deeded for highway purposes?

In my opinion, it is elementary that no one can be taxed for property which he does not own. Therefore, if a farmer, or any landowner, sells a right-of-way for a highway along, across, or through his farm, such owner is most certainly entitled to have the conveyance taken into consideration in subsequent assessments. So, if the land is assessed at so much per acre, the landowner may be assessed only for the actual number of acres that he owns.

2. If the state procures only an easement for whatever purpose is stated in the same, is the land taxable to the owner?

Where the title of the land, although subject to an easement, has been granted for highway purposes, it is my opinion that such land is taxable to the owner.

3. May real property belonging to service men be condemned while they are away?

I believe there is a special provision in the Soldiers and Sailors Relief Act under and by which the rights of a service man can be protected while he is away in the service and that if the procedure therein provided is followed, the land or lands of a service man may be condemned during this absence.

4. Can the highway department hire a contractor and his equipment by the hour to repair a highway?

Section 24-0225 of the North Dakota Revised Code of 1943 provides:

"In case of great emergency requiring immediate action, and, where delay would cause a public injury, the work may be done by the state highway department by force account."

Words and Phrases defines "force account" as follows:

"Where the assignee of a construction contract was not paid in accordance with the contract price, but hired men and teams to do the work by the day and was paid on the basis of the time they were employed, it was 'force account'." Hattel v. Poudre Valley Reservoir Company, 92 Pac. 918, 41 Colo. 370; 17 Words

and Phrases, 243.

It is my opinion, based on these authorities, that "in case of great emergency requiring immediate action, and where delay would cause a public injury" that the highway commissioner may hire a contractor and his equipment by the hour to repair the damaged highway, provided, of course, he has funds available for the payment of the work.

It is further my opinion that the determination of the question as to whether such emergency exists or not, is, primarily, for the determination of the highway commissioner and that if he, in his discretion, determines that an emergency exists, and can support the same by showing reasonable circumstances as a basis of the emergency, he is authorized to have the work done and to hire it done by some contractor and pay for the same by the hour.

Section 24-0219 of the North Dakota Revised Code of 1943 deals with requirements calling for both formal and informal bids. If an emergency exists, and a reasonable basis is shown for the need of immediate repairs, it is further my opinion that although the expenditure for the repair of a highway, under the emergency circumstances then prevailing, that the \$3000.00 limitation imposed by this statute does not apply. The statute would only be applicable when in the course of ordinary events it is possible, without causing a great deal of delay and a possible public injury, to comply by instituting the procedure therein outlined.

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