

**OPINION  
45-171**

May 26, 1945            (OPINION)

INSURANCE

RE: Casualty - On State Cars

This office is in receipt of your letter of May 24, 1945.

You request our opinion as to whether or not under the provisions of chapter 214 of the 1945 Session Laws (H.B. 79) casualty insurance may be carried, and paid for, by the state or any department or political subdivision on automobiles owned by employees thereof, or whether this Act applies only to automobiles owned by the state or by political subdivisions of the state. Chapter 214 reads as follows:

From and after July 1, 1945, the State of North Dakota or any department, agency, bureau or the employees thereof as well as any county, city, village, or other political subdivision including townships, school and park districts, drainage and irrigation districts using or operating motor vehicles, is hereby authorized to carry insurance for its own protection and the protection of any employee from claims for loss or damage arising out of or by reason of the use or operation of such motor vehicle, whether such vehicle at the time the loss or damage in question occurred was being operated in a governmental undertaking or otherwise; provided, however, that any insurance carrier furnishing such insurance shall not be permitted to raise a defense of governmental immunity from liability for any damage or loss occasioned by any such vehicle or the operator thereof, which waiver shall be contained in the policy; provided further, that if a premium savings will result therefrom, such policies of insurance may be taken out for more than one (1) year, but in no event beyond a period of five (5) years."

In construing this Act, it is necessary to determine, if possible, the intention of the legislature. If it were the intention of the legislature that the state, or any political subdivision or any department or agency thereof, should have the right to purchase and carry casualty insurance on a privately owned automobile, although used by the owner in the performance of his duty as a public officer or public employee, then the constitutionality of the Act would be gravely in doubt. It would, in our opinion, contravene section 185 (as amended) of our state constitution, which provides: "neither the state nor any county, city, township, town, school district or any other political subdivision shall loan or give its credit or make donations to or in aid of any individual, association or corporation except for necessary support of the poor . . . ."

The fact that the Act provides that the insurance shall be effective whether "such vehicle at the time of the loss or damage in question occurred was being operated in a governmental undertaking or otherwise" indicates to us that it was the intention of the legislature that such casualty insurance should apply only to

automobiles owned by the state or any local subdivision.

It is, therefore, the opinion of this office that chapter 214 of the 1945 Session Laws (H.B. 69) does not apply to automobiles owned by employees of the state or employees of any local subdivision thereof.

NELS G. JOHNSON

Attorney General