

**OPINION**  
**46-39**

January 24, 1946 (OPINION)

COOPERATIVES

RE: Rural Electrification Sales Tax

This will acknowledge your recent letter of January 19, with reference to the application of the sales tax law to purchases made by rural electrification cooperatives.

As I understand the situation that you have particularly in mind, it is this: The REA cooperatives are now finding it extremely difficult to contract for construction and procure the construction of their lines through contractors who are able to furnish all of the materials necessary to complete the contract, and as a result, it has become necessary for the cooperatives, in many cases, to purchase materials directly. You cite the instance of the Sheyenne Valley Electric Cooperative, that has now let bids on a 300-mile line and provided in its contract that, should the cooperative purchase poles or transformers direct, the amount of the contract will be reduced to the extent of the amount of such purchase.

It is undoubtedly true that if the contractor not only furnished the labor to construct a rural electrification line, but also all of the materials necessary to complete the contract under the specifications, the materials that he purchases to complete his contract would be subject to the provisions of the sales tax statutes of our state, and he would be liable for the two percent sales tax on the materials purchased. However, when the cooperative's agent purchases the materials direct and pays for them out of its own funds, that is, the allotments that are loaned to it by the government and for which it has to pledge as security its lines and equipment, the cooperative would be exempt from the sales tax as provided by section 10-1327 of the North Dakota Revised Code of 1943. That statute provides that the secretary send a fee of \$10.00 to the secretary of state for each 100 members of the cooperative, or fraction thereof, and then shall be exempt from all other excise taxes, except as provided in chapter 33 of the title "Taxation." The sales tax is an excise tax, and under this statute there seems to be no question that for materials purchased directly by the cooperatives, they are not liable to the state for the sales tax.

Chapter 33 of Title 57 of the North Dakota Revised Code of 1943 deals with the taxation of rural electrification cooperatives, and section 57-3304 thereof provides for a "lieu" tax upon gross receipts of such cooperatives for the preceding calendar year. The first five years the cooperative is engaged in business, it shall pay one percent of its gross receipts, and thereafter two percent of its gross receipts. The statute then goes on to say: "The tax hereby imposed shall be in lieu of any other taxes levied on the personal property of such cooperatives." Except for the lieu tax statute and the fee statute, the property of REA cooperatives is not taxable.

It seems to me that, although the REA fieldmen - and they are

undoubtedly operating under some directive from the Rural Electrification Bureau of the Department of Agriculture - insist that cooperatives must turn over the materials purchased directly by them to the contractor who holds the contract for the construction of a line for any cooperative, by actual transfer before the materials are installed, this would not subject the transfer on the value of the materials to the two percent sales tax. This transfer of possession for the purpose of installation, and I assume that such transfer would be without consideration. I do not believe that the cooperative is selling the property to the contractor and receiving a consideration therefor. At least that is not the situation, as I understand your letter. If it is a transfer for the purpose of giving the contractor legal possession of the materials for installation without transfer of ownership or title, then the cooperative is still the owner of the materials and consequently would not become liable to the state for any sales tax by such transfer to the contractor.

It is, therefore, our opinion here that the REA cooperatives, who purchase materials direct from the wholesalers and then use them in the installation of their lines are not subject to the provisions of chapter 308 of the 1945 Session Laws, the sales tax statute.

You might be interested in a copy of a former opinion written by this office, dealing with much the same subject matter as is contained in this letter. Accordingly, I am having a copy made of an opinion issued out of this office on February 8, 1944, and enclosing it herewith. It deals with taxation on non-profit cooperatives and includes a discussion of an additional point not raised by your letter.

NELS G. JOHNSON

Attorney General