

**OPINION**  
**46-41**

February 27, 1946           (OPINION)

COOPERATIVES

RE:   Electrification - Sales Tax - Payable When

This will acknowledge your letter of February 20, 1946, in which you apparently refer to an opinion issued out of this office on January 24, 1946, concerning the application of the sales tax law to electrification cooperatives when buying materials for the building of power lines. In order that you may know the contents of this opinion fully, I enclose a copy thereof.

If I understand your proposition correctly, the contracting firm that has contracted to build a transmission line for a rural electrification cooperative has to give a performance bond of a value high enough to cover the cost of the materials and labor necessary to build the line or portion of the line that it contracted to build, and then if the materials purchased are turned over to the contractor and he pays the invoices and is refunded by the cooperative as portions of the system or line are built. In that event, is the two percent tax applicable and is the contractor liable to the state?

If the contractor furnishes both the labor and the materials to fulfill his contract under the specifications, the materials that he purchases would be subject to the sales tax of our state and the contractor would be liable for the two percent sales tax. If he pays the invoices and is refunded by the cooperative that, in effect, would indicate that the contractor is to furnish not only the labor, but the materials. After the invoices have been paid by the contractor, the cooperative then reimburses the contractor or pays him in accordance with the contract as portions of the system are built, still he is liable for the two percent sales tax. The funds obtained for payment of the contract consist of allotments of money loaned by the government of the United States to the cooperative and the cooperative in turn pledges as security his lines and equipment. It is only when the cooperative purchases the materials from its own funds and then merely turns them over to the contractor for installation without transfer of title that it is exempt from the sales tax. The fact that the contractor pays the invoices for the materials indicates that the cooperative never had title or obtained title to the materials and consequently under those circumstances the two percent sales tax would be payable by the contractor. It is only when the cooperative orders the materials and pays for the same out of its allotted funds and then turns the materials over to the contractor without consideration and by transfer merely to give the contractor possession for the purpose of installation that it is exempt from sales tax. In such a case, I assume that the materials purchased by the cooperative may be deducted from the total contract price as was provided in the case of the negotiations of the Sheyenne Valley Electric Cooperative referred to in our opinion dated January 24, 1946.

I trust that this answers your inquiry.

NELS G. JOHNSON

Attorney General