

OPINION
53-53

May 20, 1953 (OPINION)

HIGHWAYS

RE: Preference to North Dakota Contractors

We have your request for an opinion concerning the North Dakota contractor's preference provision contained in House Bill No. 560, as enacted at the last session of the North Dakota Legislature.

The provision to which you refer is much the same as section 24-1201 of the North Dakota Revised Code of 1943 and the law as now enacted will provide as follows:

"Section 89 - CONTRACTS; FOR ROAD AND BRIDGE WORK AND MATERIALS; AWARDING TO RESIDENTS OF NORTH DAKOTA AND GIVING PREFERENCE TO RESIDENTS OF NORTH DAKOTA.) In letting of any contract for the construction of any road or bridge, road work, or for road material or culvert, by the department or by any political subdivision of the state, preference shall be given to all bona fide contractors who have been continually in business and have resided in the state of North Dakota for a period of at least one year prior to filing his bid, if at least ninety percent of the employees of such contractor engaged in highway construction and maintenance shall have been residents of the state of North Dakota for at least one year, and shall be citizens of the United States or shall have declared their intention to become such. Such preference shall be to the extent of five per cent on contracts not exceeding ten thousand dollars, three per cent on contracts exceeding ten thousand dollars and not exceeding fifty thousand dollars, and two per cent on contracts exceeding fifty thousand dollars. Such preference shall not apply to federal aid projects".

You have asked several questions concerning this provision and we will set out each of the questions together with our answer.

Your question: "1) the only change effective July 1, 1953, concerns the rate of preference allowed;"

Our answer: Yes, the law is reworded somewhat from section 24-1201 but the only substantial change is the amount of the preference.

Your question: "2) contractor's preference applies to all public streets and highways, and both as to the construction and improvement thereon;"

Our answer: Notwithstanding previous verbal indications to the contrary, we find that the contractor's preference as set out in section 24-1201 and section 89 of House Bill 560 does not apply in the case of city streets. You will note that the legislature has provided that the preference shall apply to any contract for the construction of any "road" etc. While it is most difficult to

determine what exactly is included within the term "roads", we conclude from reference to Words and Phrases, Webster's Dictionary and section 2 (20) of House Bill 560, that generally this term applies to highways in rural areas, whereas the term "street" includes highways or public ways in urban areas. Answering your question, therefore, the preference applies only to contracts for the construction and improvement of "roads", as this is commonly understood to mean rural public ways, or bridges.

Your question: "3) preference applies in the case of any contract, whether it be let by the state, a county, a municipality, or by any subdivision, except in cases involving Federal aid:"

Our answer: The preference applies to contracts let by the highway department or "by any political subdivision of the state". While this latter term would ordinarily require further interpretation, the fact that we have concluded that the term "roads" does not include city streets would preclude the possibility that the preference would apply in the case of contracts let by municipalities:

Your question: "4) for the purpose of determining contractor's preference, a special improvement district is to be considered a political subdivision".

Our answer: This, too, would be governed by our answer to your second question.

Your question: "1) Contractor's preference is provided specifically for streets and highways and public buildings. Does this include the construction of sewer lines, curbs and gutters, sidewalks, and other public improvements?"

Our answer: You will note that the North Dakota contractor's preference in House Bill 560 is said to apply to contracts for the construction of roads or bridges and materials therefor and to contracts for "road work". This latter term is quite broad but must be understood to mean any phase of construction or improvement of the road. This would include any necessary curbing and gutter work. It is our opinion, however, that an extension of this preference to sewer construction, sidewalk construction or any other such improvement would be too board an extension of the language of the statute.

Your question: "If the answer to item 1) immediately preceding is yes, then what rates of contractor's preference would apply to such items after July 1, 1953?"

Our answer: The preference rate which would apply to these items would be that which is contained in House Bill 560, section 89.

The foregoing will supersede and modify any previous opinions, verbal or written, which may have been given pertaining to the above questions.

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