

**OPINION
59-132**

April 9, 1959 (OPINION)

HIGHWAYS

RE: Utility or Transmission Lines, Construction - County Highways

This is in reply to your of March 23, 1959 requesting an opinion of this office in regard to the interpretation of House Bill No. 811 of the 1959 Legislature.

You first call our attention to section 1 of the Act providing that no electrical supply or communication line shall be constructed parallel to and within seventy-seven feet of the center line of any county highway right-of-way, without first obtaining the consent of the board of county commissioners. You request our opinion as to what constitutes a county highway within the meaning of this statute.

It is our opinion that the phrase "county highway right-of-way" as used in House Bill 811 of the 1959 Legislature refers to any "county highway right-of-way" in fact and not only the right-of-way on those county highways designated as a part of the "county road system" as prescribed in section 24-0516 of the 1957 Supplement to the N.D.R.C. of 1943.

You call our attention to the provisions of section 1 of the Bill providing that no person, firm or association shall construct certain utility lines within seventy-seven feet of the center line of any county highway right-of-way without first obtaining the proper consent, and the provisions of section 2 of the bill providing that any utility or transmission line hereinafter constructed contrary to the provisions of the Act shall be required to be removed at their own expense when required for purposes of highway expansion. You point out that construction of a designated utility line involves several elements: first, acquisition of easement for right-of-way, then staking the line, then advertising for the letting of contract for construction, and lastly the actual construction of the line by contractors or employees of the utility. You request the opinion of this office as to when, in relation to the entire construction process, the provisions of section 2 of said House Bill No. 811 would be held to apply.

It is our opinion that the reference in section 2 of the Act to any utility or transmission line "hereinafter constructed" was intended to, and does, refer and apply to the complete construction of the line and would not include completion of a line partially completed as of the time of said House Bill becoming effective. It is further our opinion that the term "construction" as used in said House Bill has reference to and includes only the physical construction of the line and does not include the preliminary planning stages such as acquisition of easements for right-of-way, staking of the line, advertising for and letting of contracts, etc.

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