

**OPINION  
64-229**

October 27, 1964        (OPINION)

Mr. John T. Traynor

Attorney for Public School District No. 1

Devils Lake, North Dakota

RE: Public Contracts - Bids - Refusal to Consider

This is in response to your letter written at the request of the school board of Devils Lake Public School District No. 1. The question submitted pertains to whether or not the school board may consider a building contract bid contained in an envelope, which envelope did not have the information required as set forth by section 43-07-12, as amended, of the North Dakota Century Code.

By law, the State's Attorney is the legal advisor of the school board. However, because of the importance of the question, we will answer it directly. Section 43-07-12, as amended, is clear in its meaning and leaves little room for construction. This section requires that the envelope in which the bid is submitted contains the following information:

1. The class of license held by the bidder;
2. The number of the bidder's license;
3. The name of the person, firm or corporation submitting the bid; and
4. Date on which license was issued or renewed.

Section 43-07-12, as amended, further contains the provision that "A bid submitted without this information on the envelope shall not be considered and shall be returned to the bidder."

This section was under consideration by the District Court in Morton County, (Kemper Construction Co. v. City of Mandan). In this case the Court held that because of the provisions of Chapter 40-22, the provisions of section 43-07-12 were considered to be permissive rather than mandatory. The Court also held that the Plaintiff was not a proper party of interest to pursue the action. The decision does not indicate which of the two positions was the one upon which the Court ultimately based its decision.

However, an analogous situation would not be present here. In the District Court decision Chapter 40-22 was considered. As pertaining to school boards, section 15-47-15 sets forth the requirements of bids but specifically exempts bids relating to any building contract. As to buildings, it would appear that section 48-02-04, subsections 5 and 6, would apply. Subsection 6 provides that "No bid will be read

or considered which does not fully comply with the above provisions as to bond and licenses, \* \* \*." The "above provisions" have reference to subsection 5, which provides that "All bidders must be licensed for the highest amount of their bids, as provided by section 43-07-05; \* \* \*." It is also noted that the penalty for violation of any of the provisions of the chapter are set forth in section 43-07-18.

Because the language of section 43-07-12 is clear and unambiguous, it is not subject to construction. Any deviation from the specific statutory provision should be accomplished by legislation. The District Court case does not appear to be a legal basis for giving a different construction to the last sentence of section 43-07-12 other than what is obtained from the clear meaning of the words used therein.

It is therefore our opinion that the specific provisions of section 43-07-12, as amended, of the North Dakota Century Code control.

HELGI JOHANNESON

Attorney General