

**OPINION
43-55**

June 2, 1943 (OPINION)

HIGHWAY COMMISSION

RE: Leasing Equipment Illegal

I have your letter of May 24th enclosing a copy of your letter of the same date to J. S. Lamb, Highway Commissioner, regarding the leasing or loaning of highway equipment, such as mowers and tractors, to private individuals for haying purposes.

Under the provisions of section 4 of chapter 159 of the 1927 Session Laws, the Department of State Highways is vested with full power and authority "to purchase, lease, or acquire all necessary road material, machinery, tools, equipment, and supplies necessary for the construction, reconstruction, repair, and maintenance of state highways. . ."

This authority goes only to the right and power to acquire road machinery, etc., by lease or otherwise. There is no authority granted to the department to permit the use of this public property for private purposes. We must, therefor, consider this question from the standpoint of the use of the property of the state generally.

There can be no doubt that the property of the Highway Department is public property, belonging to the people of the state of North Dakota. A state board or department, empowered to hold property for state purposes, does not own such property in any proprietary sense. It is the property of the state. See 25 Ruling Case Law, page 388.

The property rights of a state are as absolute and unqualified as those of an individual, and the state may, in the absence of constitutional restrictions, use, sell, or dispose of its property in any way it sees fit. Our Constitution, however, provides that the state shall not loan or give its credit or make donations to or in aid of any individual, association or corporation. See section 185 of the North Dakota Constitution, as amended by Article 32. The restriction against the state making loans or donations for private purposes would, in my opinion, prevent the use of public property for private purposes.

In my opinion, the leasing of highway equipment, such as mowers and tractors, to private individuals for private purposes, would be illegal. This would especially be true in view of the fact that the Legislative Assembly has made no attempt to authorize such use of highway equipment. In my opinion, the reason why no such statute has been enacted is because the Legislative Assembly was aware of the above mentioned constitutional restriction.

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Attorney General