

**LETTER OPINION
2020-L-05**

September 15, 2020

Mr. John Weeda
North Dakota Transmission Authority
1016 E Owens Ave
Bismarck, ND 58501-1900

Dear Mr. Weeda:

Thank you for your letter asking whether the North Dakota Transmission Authority can acquire an existing transmission facility and if it can, whether the Transmission Authority must follow the notice requirements of N.D.C.C. § 17-05-06. It is my opinion that the Transmission Authority does have the statutory authority to acquire an existing facility and that because the facility already exists and is not being built, the requirements of N.D.C.C. § 17-05-06 do not apply.

ANALYSIS

In 2005, the North Dakota Legislature passed House Bill 1169 which established the North Dakota Transmission authority “to diversify and expand the North Dakota economy by facilitating development of transmission facilities to support the production, transportation, and utilization of the North Dakota electric energy.”¹ House Bill 1169 was codified as N.D.C.C. ch. 17-05.

Under this chapter, the Transmission Authority has several enumerated powers. One of these powers is:

To the extent and for the period of time necessary for the accomplishment of the purposes for which the authority was created, plan, finance, develop, acquire, own in whole or in part, lease, rent, and dispose of transmission facilities.²

Thus, the Legislature has given the Transmission Authority statutory authority to acquire an existing transmission facility.

You next ask whether, if an existing transmission facility is acquired, the provisions of N.D.C.C. § 17-05-06 must be followed. The provisions of that section require, in part:

¹ H.B. 1169, 2005 N.D. Leg.

² N.D.C.C. § 17-05-05(10).

2. Before exercising its powers to construct transmission facilities granted to it in this chapter, the authority shall publish, in a newspaper of general circulation in North Dakota and in a newspaper in the project area, a notice describing the need for transmission facilities contemplated by the authority. Persons willing to construct the transmission facilities or furnish services to satisfy the needs described in the notice have a period of one hundred eighty days from the date of last publication of the notice within which to deliver to the authority a notice of intent.³

Words used in any statute are to be given their plain, ordinary, and commonly understood meaning within the context of which they is used.⁴ The section above requires notice before a transmission facility is constructed. In your letter you explain that here, the Transmission Authority wishes to acquire an existing facility, not construct one. When the plain meaning of a statute is apparent, it is unnecessary to delve further.⁵

The terms “acquire” and “construct” have separate meanings and are not used interchangeably in the chapter. To “acquire” means “[t]o gain possession or control of; to get or obtain⁶” whereas to “construct” means “to make or form by combining or arranging parts or elements.”⁷ Therefore, it is my opinion that the notice requirements of N.D.C.C. § 17-05-06 are not required because the Transmission Authority is not constructing a facility.

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.⁸

³ N.D.C.C. § 17-05-06(2).

⁴ N.D.C.C. § 1-02-02; *Se. Human Serv. Ctr., Dep’t of Human Servs. v. Eiseman*, 525 N.W.2d 664 (1994).

⁵ N.D.A.G. 2012-L-03.

⁶ *Black’s Law Dictionary* (11th ed. 2019) (Westlaw).

⁷ *Construct Definition*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/construct> (last visited Sept. 11, 2020).

⁸ *See State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).