

OPINION
55-53

March 7, 1955 (OPINION)

ELECTRIC COOPERATIVE

RE: Operation in Area Subsequently Annexed to City

We have your request dealing with an opinion which was rendered by this office on July 9, 1954 dealing with the Williams Electric Cooperative. The question therein discussed was whether or not this cooperative may now legally operate within that part of the city of Williston annexed to the city after the said cooperative had established its service as a rural territory.

The particular question with which you are concerned, as I understand it, is whether or not a franchise may be granted by the city of Williston to the cooperative to operate its cooperative electric facilities within this territory. The fact that this company was legally established within this territory gives it certain rights which should not be overlooked. It would hardly be conforming to law to arbitrarily destroy its property rights and bar it from operating because of the fact that the city, after this cooperative was operating in the territory, annexed such territory to the city of Williston proper.

We have to bear in mind, however, that it is the right and privilege of any city by ordinance to grant a franchise or privilege to persons, associations or corporations to operate within the incorporated limits of the city. I direct you to subsection 57 of section 40-0501 of the North Dakota Revised Code of 1943 wherein it grants to the city the power to grant franchises. No franchise except railroad companies is perpetual and consequently a franchise may be revoked for cause or the city may fail to renew the same when the period for which the franchise was granted expires. Under the conditions as they have developed, it is the opinion of this office that it is discretionary with the city of Williston as to whether or not a franchise should be granted to this Williams Electric Cooperative. This much is certain and that is, that said cooperative may not extend its operations beyond that which it legally operated prior to the annexation of the territory to the city of Williston. But we also hold that the city may legally grant a franchise to continue the operation of the cooperative to such customers as it was legally entitled to serve before the annexation. To the extent that the holding herein conflicts with the opinion rendered out of this office July 9, 1954, the said opinion is modified.

LESLIE R. BURGUM

Attorney General