N.D.A.G. Letter to Mehrer (April 1, 1985)

April 1, 1985

Mr. Owen K. Mehrer
Stark County State's Attorney
P. O. Box 130
Dickinson, North Dakota 58601

Dear Owen:

Thank you for your letter of March 6, 1985, in which you asked whether a county commission may enter into a longterm contract with another governmental entity and also whether such a contract would obligate future boards of county commissioners.

N.D.C.C. §11-11-16 provides as follows:

> 11-11-16. BOARD HAS POWER TO ERECT, REPAIR, AND MAINTAIN BUILDINGS FROM CURRENT REVENUE.--The board of county commissioners may provide for the purchase, erection, repair, and maintenance of the courthouse, hospitals, jails, and other necessary buildings within and for the county. It may purchase the sites for such county buildings if necessary and may make contracts on behalf of the county for the building, repairing, and maintaining thereof <u>if the expenditures therefor are not greater than can be paid out of the revenue of the county for the current year</u>. The board shall have the entire supervision of the construction of such buildings. [Emphasis supplied.]

N.D.C.C. §11-11-18 provides that if "the proposed expenditure is greater in amount than can be provided for by the annual tax levies," then the expenditure is an extraordinary outlay of money and must be submitted to the electors of the county. It has been the position of this office that, when determining whether expenditures are not subject to a vote as provided in N.D.C.C. §11-11-16, one must consider the total cost of the contract, not the yearly contract cost. Further, N.D.C.C. Ch. 54-40 does allow political subdivisions to enter into agreements with one another. However, N.D.C.C. Ch. 54-40 cannot be applied so as to avoid the limitations of N.D.C.C. §§11-11-16 and 11-11-18.

Therefore, if the total contract price is in excess of current available revenues, then the contract must be a year-to-year contract so as to not bind future commissions.

For your information, I am enclosing a number of letters and opinions which have been issued by my predecessors on this issue which should be of some assistance to you.

Sincerely,

Nicholas J. Spaeth

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Enclosures