

OPINION
62-70

December 14, 1962 (OPINION)

COUNTIES

RE: Construction of Jail Mandatory - May Use Emergency Funds

This is in response to your letter of December 12, 1962.

You state that the jail in Grant County has been condemned and that for the past four years it has been necessary to transport your prisoners either to the Hettinger County Jail at Mott, North Dakota, or to the Morton County Jail at Mandan, North Dakota. You further state that now the additional expense has become burdensome. There exists in the County Emergency Fund approximately \$30,000.00, an amount equal to what would be required to build a new jail and sheriff's residence. Your question is whether or not this fund may be used to construct these units or whether the question must be submitted to the voters of the county.

The first question to be answered is whether or not the maintenance of a county jail and a sheriff's residence is a mandatory obligation of the county. In that connection, I would like to quote to you section 12-44-01 of the North Dakota Century Code:

JAIL ESTABLISHED IN EVERY COUNTY. There shall be established and kept in every county, by authority of the board of county commissioners, and at the expense of the county, a jail for the safekeeping of prisoners lawfully committed."

We feel that this statute is mandatory on the county commissioners. The only qualification is section 12-44-11, which allows the transporting of prisoners to other countries when the commissioners feel that such an arrangement would cost less. That is not the issue here, so it would appear that it is necessary for Grant County to maintain a jail.

We can find no law that specifically requires a sheriff's residence be maintained at county expense. However, we are aware that the duties of sheriff require twenty-four hour service and to that end many counties provide a residence in connection with the county jail. Because of the peculiar nature of a sheriff's duties, it is our opinion that a sheriff's residence, if it is incorporated into the same building, would become a part of the jail. Whether or not the sheriff should have a residence in the jail building is a discretionary matter resting with the commissioners. We know of no authority that would require the construction or maintenance of a separate and distinct residence for the sheriff.

The next question for consideration is whether an expenditure out of the County Emergency Fund for such construction is allowed. I quote from section 57-15-28 of the North Dakota Century Code so much in part as is necessary:

EMERGENCY FUND - COUNTY. * * * * Each county may create an emergency fund, and all taxes levied for emergency purposes by any county, when collected, shall be covered into such emergency fund and shall be used only for such emergency purposes as the governing body of the county, by resolution, shall determine, to meet the mandatory obligations of the county.* * * *." (Emphasis supplied).

Having determined that the construction of a new county jail is a mandatory function of the county, it follows that it is our opinion that the county commissioners of Grant County may use funds from the Emergency Fund for such an undertaking.

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