

OPINION
65-458

February 18, 1965 (OPINION)

Mr. Ronald G. Splitt

State's Attorney

Lamoure County

RE: Veterans' Memorial Levy - Transfer to General Fund - Memorial

This is in reply to your letter in regard to Veterans' Memorials.

You inform us that as of April 4, 1956, your county commissioners created a veterans' memorial levy. Various expenditures were apparently made from this fund for suitable memorials. There had been no activity with regard to same for several years so on December 1, 1964, the county commissioners adopted and passed a resolution transferring unexpended and unpledged memorial funds to the general fund. Now apparently a municipality has applied to the commissioners for a portion of said memorial funds to erect a memorial in accordance with the provisions set forth for veterans' memorials.

You have apparently advised the county commissioners in this regard and pursuant to section 11-16-01, subsection 9, of the North Dakota Century Code, this would be the official opinion upon which they could rely. You further indicate that they have now asked whether or not they may rescind their action of December 1, 1964, and take back from the general fund a portion of the former Veterans' Memorial fund and use it for a veterans' memorial as requested by the municipality that has applied for these funds.

You further inform us that you would appreciate our opinion on the legality of taking from the general funds of the county money for use as memorial fund money for the construction of a veterans' memorial as above outlined.

We think some consideration should be given in this regard to the principle of the Hart v. Bye case, 76 N.W. 2d., 139, if there is any intention of turning county money over to a municipality to spend, though obviously under section 11-32-03 of the North Dakota Century Code cooperation between the county and city is permissible.

In regard to your specific question, while there have been numerous changes in chapter 11-32 of the North Dakota Century Code, we do not believe that the amendments thereto would justify us in departing from some of the basic principles announced in the opinion of this office of June 14, 1951, as published at Page 37 of the Report of the Attorney General, for the period July 1, 1950, to June 30, 1952. In that opinion we stated in part:

This section (section 11-32-01) provides several sources of

funds for the memorial fund created by section 11-3202 1949 Supplement; among them are the following:

1. Funds out of the general fund of the county;
2. Funds which have been raised by taxation for memorial construction;
3. Funds to be raised by special annual levy for five years;
4. Private donations.

Clearly the memorial fund consists of moneys from all of these sources, or from any one or combination of two or more. This section specifically provides that the county 'may use for such purpose (memorial construction) funds out of the general fund of such county, if there is sufficient money in said fund in conjunction with funds so donated or obtained by such levy and tax, and the proceeds of such levy, tax, and donations, together with the amount taken out of the general fund, shall be used solely for the purpose of erecting such memorial,
* * *.'

It is our opinion that your county may now use funds necessary for the memorial construction out of its general fund if funds are now available; and when the annual memorial levy for 1951 has been made, the county, if necessary to supply funds immediately needed, may issue certificates of indebtedness against such levy. * * *"

While a memorial fund levy as mentioned in that opinion would not be possible at this date we see no reason why the specific provision of section 11-32-01 of the North Dakota Century Code, i.e.: "The board may for such purpose use funds out of the general fund of the county * * *" cannot be currently utilized for such purposes as set out in the above quoted portions of our opinion on this matter.

HELGI JOHANNESON

Attorney General