

**OPINION**  
**66-41**

November 17, 1966 (OPINION)

Mr. R. J. Bloedau, State's Attorney  
Hettinger County

RE: Counties - Advertisement for Bids - Appropriations

Re: County Building

This is in reply to your letter of November 14, 1966, in which you set forth the following facts and questions:

"The county commissioners have commenced advertising for the construction of a county shed which is expected to cost between twenty-five thousand and thirty-thousand dollars. Since then I was consulted, and advised them that this could not be done, because the work will exceed \$12,000.00, and they have not obtained plans, drawings and specifications from a licensed architect. They have apparently procured drawings and specifications only from the company interested in the sale of that type of building. In my opinion, the provisions of section 48 -02-02, as amended, are controlling, particularly since they are subsequent to section 11-11-32. To settle any doubt in the minds of the county commissioners, I therefore request your opinion relative to the following questions:

1. May the county advertise or let bids for the construction of such a building, to cost at least \$25,000.00, when the county has not procured plans, drawings and specifications from a licensed architect?
2. It further appears that no special appropriation for such construction was made in the budget adopted in July, and hence can such a contract be entered into, at any event, in view of the provision in chapter 11-23? (See section 11-23-08.)"

Section 48-02-02 of the North Dakota Century Code, as amended, provides:

"PREREQUISITE TO BUILDING AND REPAIR BY CONTRACT. - In altering, repairing, or constructing any building belonging or appertaining to any of the public institutions of the state, or to any county, city, park district, village, school district, or other political subdivision of the state, or in making any improvements connected therewith or pertaining thereto, or in doing any work thereon amounting to more than twelve thousand dollars, the governing body of such public institution, or of such municipality or political subdivision, shall procure such plans, drawings, and specifications thereof, upon competitive bids or otherwise as such board may deem necessary. In all cases where the work exceeds twelve thousand dollars such plans,

drawings, and specifications shall be procured from a licensed architect except that, in the case of public buildings in use by or to be used by the North Dakota agricultural experiment station in connection with farm or agricultural research operations, such plans, drawings and specifications may, with the approval of the board of higher education, be procured from a registered professional engineer, providing such engineer is in the regular employment of the agricultural experiment station."

Section 48-02-03 of the North Dakota Century Code provides:

"METHOD USED IN ADVERTISING FOR BIDS.--The governing board shall advertise for bids for the doing of the work for which plans, drawings, and specifications are required. Such advertisement shall be published for three successive weeks, the first publication thereof to be at least twenty-one days prior to the date of the opening of bids thereunder. Such advertisement shall be published in the official newspaper of such municipality or political subdivision, and if it has no official newspaper, then in the official newspaper of the county in which such building is located, and also in some trade publication of general circulation among the contractors, building manufacturers, and dealers of this state."

Section 11-11-32 of the North Dakota Century Code authorizes the board of county commissioners to employ an architect and prescribes the rate of compensation. We do not believe this provision is in conflict with the provisions quoted above. It is our opinion that when the county erects a building costing twelve thousand dollars or more, the county must secure plans and specifications therefor from a licensed architect and must advertise for bids for the construction of such building.

The provisions for the county budget are set forth in Chapter 11-23 of the North Dakota Century Code. Section 11-23-06 of the North Dakota Century Code provides:

"EXPENDITURES CANNOT BE MADE IN EXCESS OF APPROPRIATION.--No county expenditure shall be made or liability incurred, nor shall a bill be paid for any purpose, in excess of the appropriation therefor, except as provided in sections 11-23-07 and 11-23-08.

Section 11-23-07 permits a transfer of money from one fund to another. Section 11-23-08 is applicable to the interim period between the time the past budget expires and the time before the new appropriations are made, and permits expenditures not in excess of the rate of expenditure authorized for the same purposes for the preceding year. The statute further provides that no new or unusual expense must be incurred, permanent contract made, nor salary increased until an appropriation therefor has been made by the board of county commissioners.

The above statutes require an appropriation to be made before an expenditure may be made. If an expenditure could be made without an appropriation therefor, the taxpayers would not have the opportunity to object to such expenditure as is provided in section 11-23-04.

In view of the above cited statutory provisions, it is our opinion no expenditure can be made unless an appropriation has been made therefor. If no appropriation was made for the building in question, no liability can be incurred. The acceptance of a bid on a building is the incurrence of a liability since it becomes a contractual obligation.

We trust this will adequately set forth our views on the matters presented.

Yours very truly,

Helgi Johanneson  
Attorney General