

**OPINION
66-48**

October 1, 1966 (OPINION)

Mr. Lewis Sutton

Chairman

Cass County Commissioners

Fargo, ND

RE: Counties - Insurance for Depreciation - Authority

This is in response to your letter in which you request an opinion as to whether or not the county can purchase depreciation insurance which is over and above the insurance provided by the State Fire and Tornado Fund through a local agency or an association of agencies. You then set forth what you mean by depreciation insurance and, as you understand it, such insurance covers the difference between the value by the actual cash value and the insurable replacement cost.

Section 26-24-04 of the North Dakota Century Code, in substance, provides that public buildings and the permanent fixtures and contents therein belonging to the state or political subdivisions thereof shall be insured under the provisions of this chapter. This chapter refers to the State Fire and Tornado Fund and the insurance program thereunder.

In reviewing the provisions relating to counties and political subdivisions, we are not aware of any statute which authorizes securing or obtaining insurance other than that required under the State Fire and Tornado Fund, Chapter 26-24 of the North Dakota Century Code. It is a basic rule of law that political subdivisions and state departments have only such authority as is specifically granted by statute and necessarily implied from the grant. Applying this rule, we come to the conclusion that political subdivisions, including counties, would be able to insure only under such conditions as the Legislature has authorized.

This reasoning is supported by the provisions of section 40-43-07 of the North Dakota Century Code, which authorizes political subdivisions to secure liability insurance. It is further supported where it is observed that the 1965 Legislature amended section 26-24-09, which authorized public libraries to secure insurance for vandalism and at the same time authorized the State Fire and Tornado Fund to issue policies to cover vandalism.

The type of insurance which is available to the political subdivisions is set forth in the foregoing sections of law. In addition to this, it is observed that if such insurance is not made available by the State Fire and Tornado Fund and is rejected under the provisions of section 26-24-16, the political subdivision may secure the insurance from any authorized insurance company and pay the premium therefor. The only other provision relating to insurance for the building and material is found in section 48-01-03, but the

North Dakota Supreme Court in *Reischus v. Implement Dealers' Insurance Co.*, 118 N.W.2d. 673, stated that said section applied only where the building was under construction. This means that the insurance available under section 48-01-03 is not available after a building has been completed and is being used.

It is therefore our opinion that a political subdivision is not authorized to secure depreciation insurance and neither is the State Fire and Tornado Fund authorized to issue such insurance. To accomplish this, it would be necessary for the Legislature to enact appropriate legislation.

HELGI JOHANNESON

Attorney General