

OPINION
67-46

March 27, 1967 (OPINION)

Mr. C. E. Crane

State's Attorney

Hettinger County

RE: Counties - Historical Society - Purchase of Real Property

This is in reply to your request for an opinion of this office as to whether or not the county historical society has power and authority to purchase and own real property and to enter into a contract for deed for the installment purchase of the same.

Subsection 3 of section 11-11-53 of the 1965 Supplement to the North Dakota Century Code provides:

3. The appropriation and levy authorized by this section shall not be used to defray any expenses of a county historical society until such society is incorporated under the laws of this state as a nonprofit corporation, is affiliated with and has its articles of incorporation and bylaws approved by the North Dakota state historical society and the attorney general, and has contracted with the board of county commissioners in regard to the manner in which such funds received will be expended and the services to be provided; provided, however, that historical societies which qualified for county funds under the provisions of subsection 1 of this section prior to July 1, 1965, shall not be required to have its articles of incorporation and bylaws approved by the attorney general to receive funds under the provisions of subsection 1 of this section."

We believe the clear implication of this subsection is that a county historical society will be incorporated under the laws of the state of North Dakota as a nonprofit corporation. Any nonprofit corporation assuming no restriction in articles of incorporation or bylaws has power pursuant to section 10-24-05 of the North Dakota Century Code as follows:

10-24-05. GENERAL POWERS. Each corporation shall have power:

* * * *

4. To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

* * * *

8. To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine,

issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

* * * *."

On such basis it would be the opinion of this office that the nonprofit corporation would have power to purchase and own real property and to enter into a contract for deed for the installment purchase of same, assuming no restrictions against same are in its articles of incorporation or bylaws.

However, we do not believe that the tax levy authorized by section 11-11-53 can be used for the "acquisition" of such real property. Subsection 2 of said section 11-11-53 provides:

2. The board of county commissioners is hereby authorized to levy a tax, in addition to all levies now authorized by law, of not exceeding one-quarter of one mill for the promotion of historical works within the borders of such county and in general defray the expense of carrying on historical work in the county including, but not limited to, the maintenance of any historical room or building, and furthering the work of the historical society of such county."

We note specifically the use of the words "expense" and "maintenance" in said subsection. We find no reference therein to acquisition of real property title. We note also that the board of county commissioners is "authorized" to levy a tax by said subsection 2 of section 11-11-53 and under authority granted by subsection 1 of section 11-11-53 "may appropriate" moneys.

On such basis we find no legal objection to payment of a reasonable rental for the use of a building owned by another entity, interest on borrowed money to the extent it is correlated to current use of the building, or depreciation on a building owned by the nonprofit corporation also to the extent same is correlated to current use of the building. However, we do not believe the county historical society can contract to pay the purchase price of such building from such tax levy or appropriation, or use such tax levy or appropriation for acquisition of title to such building except to the extent such expenditure is for current use of such building.

HELGI JOHANNESON

Attorney General