

OPINION
68-109

July 16, 1968 (OPINION)

Mr. John A. Alphson

State's Attorney

Grand Forks County

RE: Counties - Courthouses - Courtrooms

This is to acknowledge receipt of your letter of July 8, 1968, pursuant to the request of your board of county commissioners, requesting an opinion regarding problems you have run into with regard to proposed remodeling of third floor juvenile and district courts.

You state that two plans have been submitted by each of the District Judges resident in Grand Forks County and that neither judge is able to compromise his plan. Apparently the county commissioners wish to go forward with the project and therefore you request our opinion in regard to the following questions:

1. In the event the District Court and Juvenile Court Chambers are remodeled, to what extent may the District Judges dictate the manner of remodeling to the Board of County Commissioners?
2. If there is authority that the District Judges may dictate the type of remodeling, would a senior resident judge have more say than any other judges within the County?
3. Do the County Commissioners have the authority to designate the quantity and quality of remodeling the District Court facilities?"

Your letter cites section 11-11-16 of the North Dakota Century Code and we therefore assume that you are familiar with the cases cited in the annotations thereto; nevertheless we believe some of the language of the Supreme Court of this state in *McCann v. Carlson*, 26 N.D. 191, 144 N.W. 92, at page 195 of the North Dakota Report is so clearly apropos as to be worthy of quotation herein. The decision informs us that:

"* * * The question then narrows itself to this: Can the courts, in an equitable action such as this, supervise the county commissioners in the exercise of their discretion, and tell them the kind of a courthouse that they must erect? We do not think that the courts have that power. Supervision of this important work must be delegated to some responsible body of men, and the legislature has seen fit to repose that discretion in the board of county commissioners. Section 2566, Rev. Codes 1905, reads: 'The board of county commissioners of any county, erecting county buildings under the provisions of this subdivision, shall have power to purchase grounds for a site if

necessary, let contracts for the building and completion of such courthouse or jail, or both, and the buildings connected therewith, and shall have the entire supervision of its construction. . .' So long as the commissioners are exercising this discretion in good faith, they should not be molested by the courts. * * *"

We would certainly not suggest that the courtrooms, as remodeled, could be so inadequate as to practically prevent the utilization of same as courtrooms; however, we are unable to find any authority in the statutes of this state giving a basis for any form of an affirmative answer to your first question. On such basis your second question does not in terms require an answer. In reply to your third question, the county commissioners do have the authority to designate the quantity and quality of remodeling the District Court facilities.

We might comment in passing that it is entirely possible that some of the constitutional and statutory rights of parties litigant to such things as "due process of law", "a speedy and public trial", etc., might necessarily imply adequate courtroom facilities. On such basis, the court's concepts of what would constitute adequate courtroom facilities could be much more helpful to the board of county commissioners, in furnishing same, prior to an expenditure of county funds for such purpose, than a judicial decision, after a trial, that due to architectural deficiencies due process of law, or a speedy or public trial had been denied to some party litigant. However, we would hesitate to suggest that parties litigant in the Grand Forks county courthouse at the present time, because of architectural deficiencies, are not receiving their full statutory and constitutional prerogatives. We would presume that any remodeling would necessarily result in improved rather than less adequate facilities.

HELGI JOHANNESON

Attorney General