

**OPINION
70-115**

April 21, 1970(OPINION)

Mr. William D. Yuill
Assistant State's Attorney
Cass County

RE: Counties - Employee Pension Plan - Private Companies

This is in response to your letter of April 10, 1970, wherein you request an opinion of this office with regard to the property of Cass County contracting with private firms in funding and operating an employees pension plan. Together with copies of correspondence which you have had concerning the matter, you submit a xerox copy of an opinion dated March 10, 1970, which apparently your office rendered to the Cass County Commission, wherein you outlined the retirement plan as set forth in Chapter 54-52 of the North Dakota Century Code, as amended, together with your reply to the questions which had been submitted to your office.

The apparent questions which had been submitted to your office were (1) whether there exists any authority for a County to enter into a retirement plan with a private insurance company and (2) whether a County may contribute by employer's contribution to such a private retirement program. Your reply and opinion to the foregoing questions appear as follows:

1. We find no authority for a County entering into a retirement plan with a private insurance company. It is our impression that legislative authority must be granted before a County could legally extend tax monies as contributions towards a private retirement program. Such permissive legislation cannot be found by us to exist.
2. Your second question relates to the contribution by the County to a private retirement program and accordingly, it has been answered by the foregoing, however, we point out to you that Section 54-52-07 N.D.C.C. provides specifically that the contribution to a retirement plan shall be considered a retirement contribution and not additional compensation. The statute further provides that this has specific application to elected and appointed officials whose compensation is fixed by statute or by governing bodies, boards or commissions."

We find that we are in accord with your observation that there exists no statutory authority for a county to enter into such a retirement plan or agreement with a private insurance company or other private agency. We also note that section 54-52-02.1 provides for singular authority for counties and other entities and agencies to enter into retirement plans. We quote therefrom as follows:

COUNTY, CITY, AND NONCERTIFIED SCHOOL DISTRICT EMPLOYEES AUTHORIZED TO JOIN PUBLIC EMPLOYEES' RETIREMENT SYSTEM. The boards of count commissioners of the several counties and the governing bodies of any city or school district are hereby authorized on behalf of their permanent employees, and permanent noncertified employees only in the case of school districts, to enter into agreements with the state retirement board for the purpose of extending the benefits of the state employees' retirement system, as provided in chapter 54-52, to such employees. * * *."

In absence of legislation enabling and authorizing a county or other entity to enter into a retirement plan or contract with a private insurance company it would appear that the only retirement plan available must be based upon an agreement as set forth in Chapter 54-52 of the North Dakota Century Code, as amended, and that any or all contributions to a retirement plan must be made only pursuant to and in accordance with an agreement as contemplated by said Chapter 54-52.

In direct reply to your request for an opinion, we are of the opinion that you have correctly interpreted the law in your letter, dated March 10, 1970, addressed to Cass County Commission, Courthouse, Fargo, North Dakota, and hereby further advise that under no circumstances under the present law, may a county enter into a retirement plan or agreement with a private insurance company or private agency nor can any employer contributions be made toward such plan or agreement.

HELGI JOHANNESON
Attorney General