

**OPINION
70-122**

June 16, 1970(OPINION)

Mr. Richard B. Bear
Assistant State's Attorney
Burleigh County

RE: Counties - Public Defenders - Authority of County to Cooperative

This is in response to your letter in which you state that pursuant to action taken by the Burleigh County Bar Association, a study was made which concluded that the utilization of a regional public defender was feasible and that efforts should be undertaken to initiate a pilot project for this purpose in a nine (9) county area, surrounding and including Burleigh County.

The proposed project contemplates that each county will budget a certain amount of money to represent its share of costs in a matching program to be obtained through the combined law enforcement council. The public defender would be retained for a period of one year as a pilot project. The estimated costs involved would be for items such as rent, secretarial help, etc. A preliminary discussion has been had with some county commissioners of various counties who indicated their willingness to cooperate in the project but wish to be assured

that it is legally possible to enter into such agreement or arrangement, and for this reason you are asking for our opinion whether or not there is any legal prohibition against proceeding with such a project.

It is proposed that either the judges of the districts involved agree that one person would function as the public defender and permit him to voucher funds from the various counties, or to have the counties themselves enter into a joint contractual, relationship among themselves governing the transactions, funding, etc. of the public defender.

Chapter 54-40 of the North Dakota Century Code relates to joint exercise of governmental powers. Section 54-40-01 generally provides that two or more governmental units may enter into agreements to do jointly whatever they are authorized and permitted to do individually. This section, however, has its limitations and permits such cooperation or joint agreement only with areas having a common boundary in certain territory. This section does not appear to permit tacking or projecting upon projection of "leap frogging" to establish a common boundary.

However, Section 54-40-08 of the North Dakota Century Code seems to permit governmental bodies to enter into joint programs without regard to common boundaries, etc. This section, on a casual examination, seems to pertain primarily to library activities, but upon closer scrutiny it is noted that it embraces other services or facilities to the inhabitants of the governmental unity. A governmental unit includes, amongst other governmental bodies, counties.

Section 54-40-03 sets forth the manner in which the funds provided by such agreement may be disbursed and basically provides for disbursement as may be agreed upon by the contracting parties. The method, however, must conform, as far as practical, with the method provided by law for the disbursement of funds by the contracting parties. Section 54-40-04 also requires that the agreement contain the period of time during which the operation is to be in effect and how the agreement shall be terminated. The distribution of any surplus money or property in the event of completion of the project should be contained in the agreement pursuant to the provisions of Section 54-40-05.

The basic question is whether or not each county has the necessary authority to provide for a public defender. We note that the various Courts are authorized to appoint counsel for indigents (see section 29-07-01.1 and related provisions). This section, or other related sections, do not specifically provide the authority to the counties to engage the services of an attorney for indigents. It, however, gives the judiciary

the authority to do so. Under the general statutes pertaining to county commissioners (Chapter 11-11), we find that it is the duty of the county commissioners to provide funds and other facilities to the judiciary. This would include the necessary funds to secure the services of an attorney for an indigent under appropriate conditions. The county is in this manner authorized, if not obligated, to provide the necessary funds. It further appears that this is a function that each individual county is authorized or obligated to perform.

It is, therefore, our opinion that the counties, by virtue of the provisions of Section 54-40-08 and other provisions contained in Chapter 54-40 of the North Dakota Century Code, may enter into a cooperative joint contract or agreement to provide for a regional public defender to function in these various counties. It is our further opinion that the counties may budget and appropriate money to be used for this joint activity. The agreement must spell out the manner in which funds are to be expended, withdrawn or disbursed.

The agreement should, amongst other things, provide where such funds will be deposited and the manner in which vouchers may be drawn against the funds. It would appear that approval by the District Court of every voucher would be a necessity before any funds can be withdrawn.

HELGI JOHANNESON
Attorney General