

OPINION
79-56

April 9, 1979 (OPINION)

Mr. John M. Olson

Burleigh County State's Attorney

P. O. Box 1901

Bismarck, North Dakota 58501

Dear Mr. Olson:

This is in response to your letter of April 3, 1979, concerning possible alternatives for the funding of a combined law enforcement facility.

In your letter you refer to our previous opinion on this subject, issued on February 21, 1979, in which we concluded that the Legislative Assembly did not intend by the enactment of sections 21-03-06(7a) and 21-03-07(2) to authorize payment of judgments in eminent domain by the use of general obligation bonds. After citing the provisions of North Dakota Century Code sections 11-11-16 and 11-11-18 we relied on in our previous opinion, you explain that the Burleigh County Commission is still attempting to devise a means whereby it might finance the purchase of certain property for the law enforcement center, and that the Commission is currently negotiating with the Bismarck City Commission on this subject. Your letter then sets forth the following facts and questions:

The Burleigh County Commission has expressed its desire to purchase land adjacent to the combined law enforcement center by contract for deed. I assume that such a proposal would operate to allow Burleigh County an extended period of time over five to ten years to complete such a purchase. Obviously, the land acquisition could possibly culminate in the county of Burleigh making yearly payments out of its annual tax levies, as budgeted accordingly, to a financial institution at a certain rate of interest for the purchase of this property. You will note that section 11-11-16 refers to the authority of the county board to purchase sites for county buildings "if the expenditures therefor are not greater than can be paid out of the revenue of the county for the current year." My first question, therefore, is whether or not the county of Burleigh can purchase land based upon a contract for deed if the yearly expenditure for same will be within the yearly appropriations and budgeted accordingly. And the same to be done without an election pursuant to the provisions of section 11-11-18.

Chapter 54-40 relates to the joint exercise of governmental powers. As I indicated earlier, the county of Burleigh and the city of Bismarck have determined that the acquisition of this property adjacent to the combined law enforcement center is necessary for future planning and desirable as a site for the construction of a jail at some future time. My second

question, therefore, is whether or not this chapter, authorizing two political subdivisions to enter into a contract of mutual and cooperative interest, will provide for the lawful acquisition of the property described. In other words, if the city of Bismarck and the county of Burleigh enter into a long-range agreement, providing for the amalgamation of existing facilities and combining of certain services, would the land acquisition pursuant to a contract for deed be lawful pursuant to these statutes found in Chapter 54-40.

As we noted in our previous opinion on this subject, sections 11-11-16 and 11-11-18 provides as follows:

11-11-16. BOARD HAS POWER TO ERECT, REPAIR, AND MAINTAIN BUILDINGS FROM CURRENT REVENUE. - The Board of county commissioners may provide for the purchase, erection, repair, and maintenance of the courthouse, hospitals, jails, and other necessary buildings within and for the county. It may purchase the sites for such county buildings if necessary and may make contracts on behalf of the county for the building, repairing, and maintaining thereof if the expenditures therefor are not greater than can be paid out of the revenue of the county for the current year. The board shall have the entire supervision of the construction of such buildings.

11-11-18. BOARD TO SUBMIT EXTRAORDINARY OUTLAY TO VOTE. - The board of county commissioners shall submit to the electors of the county at any regular or special election any proposal for an extraordinary outlay of money by the county when the proposed expenditure is greater in amount than can be provided for by the annual tax levies. If the board considers the courthouse, jail, or other public buildings of the county inadequate for the needs of the county or deems it necessary to build a county hospital, and if it is thought that it is not for the best interests of the county to issue bonds to aid in the construction of such buildings or that the construction of such buildings by any other procedure is not for the best interests of the county, it shall submit to the electors of the county, at any regular or special election, the proposal for the construction of a courthouse, jail, or other public building by establishing a building fund to aid in the construction thereof. The requirements of this section shall not apply to lease-purchase agreements authorized by section 24-05-04.

A critical point in the application of these sections to your questions would appear to be the meaning of the term "expenditures" as used in sections 11-11-16 and 11-11-18; whether this term refers to the total contract price of the site to be purchased or whether it may be construed to refer only to the annual sum of payments made over a period of years. We can find nothing in these sections themselves which makes one interpretation more compelling than the other.

We are aware of only one section of law which specifically provides for the financing of county purchases over a period of time, other than by the use of general obligation bonds which we discussed in our

previous opinion. section 24-05-04 concerns the lease or purchase of county road machinery. The legislative history of this section indicates that the final sentence authorizing lease-purchase agreements of a five year maximum for road machinery was added to this section as an amendment in 1977. However, it appears that this authority was added not so much because of any inherent inability of the county to agree to long-term contracts, but because of the prohibitory language of the section itself as it existed prior to amendment.

Whether a county has any inherent or common law authority to enter into long-term contracts does not appear to have been the specific subject of any reported cases in our courts. Courts of other states have treated this subject diversely depending upon whether the authority exercised is said to be a "governmental function" or a "business power" of the political subdivision. 56 Am. Jur. 2d. Municipal Corporations, Counties and Other Political Subdivisions section 154. However, no such distinctions in the inherent powers, if any, of political subdivisions have been recognized by the courts of this state and the decisions of other jurisdictions are therefore considered to be an infirm basis upon which to interpret sections 11-11-16 and 11-11-18. It is preferable, we believe, to interpret these sections in the light of the common and accepted rules of statutory construction as applied to the authority of political subdivisions.

It has long been recognized in this state that inasmuch as counties are political subdivisions of the state their powers and authority are only those which the Legislature has seen fit to grant by statute. Zuger v. Boehm, 164 N.W.2d. 901 (N.D. 1969); Ulrich v. Amerada Petroleum Corp., 66 N.W.2d. 397 (1954); Eikevik v. Lee, 73 N.D. 197, 13 N.W.2d. 94 (1944). It is also an accepted canon of interpreting the statutory authority of political subdivisions that in defining their powers any question as to their authority must be resolved against them. See, Myhre v. School Board of North Central Public School District No. 10, County of Richland, 122 N.W.2d. 816 (N.D. 1963); Batty v. Board of Education of City of Williston, 67 N.D. 6, 269 N.W. 49 (1936); Lang v City of Cavalier, 59 N.D. 75, 228 N.W. 819 (1920); Pronovost v. Brunette, 36 N.D. 288, 162 N.W. 300 (1917). While it might be argued that the "authority" which as been granted by the sections in question is the authority to purchase the site and that the manner and means of purchase are within the discretion of the County Commission, we believe that the manner of purchase, having been limited to some extent in sections 11-11-16 and 11-11-18, is still subject to a narrow interpretation under the canons of construction outlined above. In Lang, supra, the North Dakota Supreme Court said:

A municipal corporation is an agency of the state. It is purely a creature of statute. Constitution, section 130. It takes its powers from the statutes which give it life, and has none which are not either expressly or impliedly conferred thereby or essential to effectuate the purposes of its creation. In defining its powers, the rule of strict construction applies, and any doubt as to their existence or extent must be resolved against the corporation. (Citations omitted.) But the existence and extent of a municipal

corporation's powers having been determined and measured the rule of strict construction no longer applies, and the manner and means of exercising those powers where not prescribed by the Legislature are left to the discretion of the municipal authorities (emphasis added).

We believe this same reasoning applies with equal force to counties. In this case it would appear that the Legislative Assembly has indeed prescribed the manner and means by which the county's authority to purchase land for a county building is to be exercised and as such, we believe those means are subject to the narrow construction applied by our courts to the authority of political subdivisions. We believe that the exceptions contained in sections 11-11-16 and 11-11-18 for "expenditures" not subject to a vote must be interpreted to apply to the total cost of the purchase contract and not the yearly contract price of a contract for deed. This construction is also consistent with the holding of our court announced in *Stern v. City of Fargo*, 18 N.D. 284, 122 N.W. 403 (1909), to which we referred in our previous opinion at page 8.

In your second question you ask whether, if the city and county enter into an agreement under Chapter 54-40, the acquisition of land by a contract for deed would be lawful. Since we have already answered your first question in the negative, we must for the purposes of any response to your second question interpret it as asking whether an agreement under Chapter 54-40 would, assuming the city has the authority to purchase the property on a contract for deed, overcome the county's lack of authority to make the same purchase in the same manner when acting alone.

In considering this question it seems to us that if the construction of Chapter 54-40 which you contemplate were to be adopted, and statutory prohibitions, expressed or implied, operating against one political subdivision could be overcome by the authority of another political subdivision when an agreement is made under Chapter 54-40, statutory prohibitions applicable to the first political subdivision generally would be reduced to nothing and legislative intent frustrated as long as another political subdivision could be found willing to make an agreement. The only way, under such circumstances, to prevent a political subdivision from taking the prohibited acts would be to deny the same authority to all governmental units. This would be a strange if not an absurd result which we do not believe the Legislative Assembly to have intended. We also believe that the restrictions on the methods of financing land purchases contained in sections 11-11-16 and 11-11-18 constitute a special provision of law more directly applicable than Chapter 54-40 and, as such, the language of sections 11-11-16 and 11-11-18 as we have interpreted them must control. North Dakota Century Code section 1-02-07.

In direct response to your first question, it is our opinion that the county may not purchase property on a contract for deed if the total contract price for the property exceeds that amount which may be paid from the county's revenues for the current year. In response to your second question, it is our opinion that the authority provided in Chapter 54-40 cannot be applied so as to avoid the application of sections 11-11-16 and 11-11-18 as we have construed them.

We trust that the foregoing will be useful to you.

Sincerely,

ALLEN I. OLSON

Attorney General