

Date Issued: February 10, 1982 (AGO 82-10)

Requested by: D. K. Stetson, Assistant State's Attorney
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- QUESTION PRESENTED -

Whether a county may issue bonds under the provisions of section 21-03-06(1)(a) of the North Dakota Century Code to fund the construction of a building on the county fairgrounds.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a county may issue bonds under the provisions of section 21-03-06(1)(a), N.D.C.C., to fund the construction of a building on the county fairgrounds.

- ANALYSIS -

Section 4-02-32, N.D.C.C., provides that the cost of buildings and improvements made to property leased or purchased for use as a county fairgrounds ". . . may be paid out of the general fund of the county if the fund is sufficient after meeting all other obligations imposed on it . . ." or that such costs may be paid from the levy of an assessment ". . . over and above the amount authorized to be levied for general purposes . . ." section 21-03-06(1)(a), N.D.C.C., authorizes a county to issue bonds "to provide county buildings."

Section 4-02-32, N.D.C.C., was originally adopted by the 1919 Legislative Assembly while section 21-03-06, N.D.C.C., was originally adopted by the 1927 Legislative Assembly. These sections remain substantially unchanged from the originals. Records of the legislative intent underlying these statutes are unavailable so that the determination of the legislative intent behind the statutes must be based upon statutory rules of interpretation.

Section 1-02-07, N.D.C.C., states, in part, as follows:

1-02-07. PARTICULAR CONTROLS GENERAL. Whenever a general provision in a statute shall be in conflict with a special provision in the same or in another statute, the two shall be construed, if possible, so that effect may be given to both provisions

Although section 4-02-31, N.D.C.C., specifically authorizes the Board of County Commissioners in any county to pay for the costs of constructing buildings or improvements on county fair land from the general funds of the county or by the assessment of the tax over and above the amount authorized to be levied for general purposes, there is no language in that section which suggests that these are the exclusive methods of paying for the cost of such buildings or improvements. Section 21-03-06, N.D.C.C., which was adopted later in time and which is far more broad than section 4-02-32, N.D.C.C., authorizes a county to issue bonds subject to specified limitations, "to

provide county buildings," The term "county buildings" is not specifically defined. It is clear from a reading of section 27-03-06(2), N.D.C.C., for example, that the Legislature was fully aware of its power to place limitations on such terms as "municipal or public buildings." Therefore, its decision not to place limitations on the definitions of the term county buildings indicates that a broad definition of this term is appropriate.

Since 1919, the Legislature has determined that the construction of county fair buildings and improvements for the purposes of a county fair is an appropriate county purpose and that county funds may be expended for such purposes. The ability to finance county fair buildings and improvements under the provisions of section 21-03-06, N.D.C.C., will enable the Board of County Commissioners to have greater flexibility in financing such projects. The county electorate will not be deprived of the opportunity to disapprove the issuance of bonds for the construction of buildings on county fairgrounds because of the election requirement of section 21-03-07, N.D.C.C. As a result, the types of protections afforded to county residents under sections 4-02-31 and 4-02-32, N.D.C.C., will not be circumvented by the issuance of bonds under chapter 21-03, N.D.C.C. Therefore, it is my opinion that a county may issue bonds under the provisions of section 21-03-06(1)(a), N.D.C.C., to fund the construction of buildings on the county fairgrounds.

The determination whether or not a proposed improvement to county fairgrounds is a "building" within the meaning of section 21-03-06(1)(a), N.D.C.C., is one of fact which must be made on an individual basis by the Board of County Commissioners.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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