

Date Issued: July 6, 1982 (AGO 82-57)

Requested by: A. S. Benson  
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- QUESTIONS PRESENTED -

I.

Whether a county may use general fund moneys to construct a county shop, estimated to cost in excess of \$100,000.00, without a vote of the people.

II.

Whether a county may use general fund moneys to construct a county shop, estimated to cost in excess of \$100,000.00, without an architect.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a county may use general fund moneys to construct a shop, estimated to cost in excess of \$100,000.00, without a vote of the people if the expenditure does not exceed the amount that can be provided for by the annual tax levies for one year, plus other moneys available to the county, and if the expenditure has been properly budgeted.

II.

It is my further opinion the services of an architect must be obtained for a building costing in excess of \$25,000.00.

- ANALYSIS -

I.

Section 11-11-16 of the North Dakota Century Code pertaining to board of county commissioners reads in part:

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.

This section grants the board of county commissioners the power to erect, repair and maintain buildings from current revenue. Additionally, section 11-11-18, N.D.C.C., states, in part:

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 by the annual tax levies. . .

Section 11-11-18, N.D.C.C., specifies that there is an extraordinary outlay of money when the proposed expense is greater than the funds provided for by annual tax levies. At first glance, this section and its use of the words "annual tax levies" would appear to be in conflict with section 11-11-16, N.D.C.C., and the phrase "current revenue". This apparent conflict was resolved in Schoonover v. Morton County, 267 N.W. 2d. 819, where the Court deemed section 11-11-18, N.D.C.C., to include all the revenues available to the county. "The mere fact that an expenditure will be greater than an amount provided for by county tax levies for one year does not make it an extraordinary outlay." *Id.* at 824.

North Dakota statutory law has given boards of county commissioners the authority to erect buildings from the current fiscal year revenue and provides that a proposal must be submitted to a vote of the electors of the county only if it is an extraordinary expense.

## II.

Section 48-02-02, N.D.C.C., pertaining to the construction of public buildings, reads in part:

In altering, repairing, or constructing any building belonging or appertaining to any of the public institutions of the state, or to any county, city, park district, school district, or other political subdivision of the state, or in making any improvements connected therewith or pertaining thereto, or in doing any work thereon, the estimated cost of which amounts to more than twenty-five thousand dollars, the governing body of such public institution, or of such municipality or political subdivision, shall procure such plans, drawings, and specifications thereof, upon competitive bids or otherwise as such board may deem necessary. In all cases where the estimated cost of such work exceeds twenty-five thousand dollars, such plans, drawings, and specifications shall be procured from a licensed architect, . . .

This section requires that an architect must be hired where the estimated cost of a public building is in excess of \$25,000.00. Moreover, the architect must represent the county and not be employed by a potential bidder.

-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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