

**OPINION**  
**46-44**

March 15, 1946 (OPINION)

CITIES

RE: Power of Commission to Appoint Attorneys to Appear for Litigants in Private Matters

This office is in receipt of your request for an opinion upon the following question:

"Is it legal for the Bismarck City Commission to appoint an assistant city attorney to represent the city's interest in rents, attempted evictions and allied matters?"

We have a letter from Mr. Kenneth W. Simmons, Chairman of the Rent Control Committee, appointed by the Bismarck City Commission, asking for an opinion on practically the same question. In Mr. Simmons' letter he explains that a large number of complaints have been received by the Rent Control Committee from persons who feel they are being over-charged. Many of the complainants, however, ask that the matter be not taken up with the landlords because they fear that the landlords will become incensed and either raise the rents further or serve eviction notices upon them. He further suggests that if the committee is to function effectively, it must be put in a position to protect tenants from landlords who would use the courts to enforce unfair methods.

Mr. Simmons states further that as city attorney you have advised him that the appointment of an assistant city attorney for the purpose indicated would be to use the city funds, which are public funds, for private purposes.

The only statute which possibly would have a bearing upon this question is subdivision 1 of Chapter 40-0501 of the North Dakota Revised Code of 1943 defining powers of municipalities. It provides as follows:

"The governing body of a municipality shall have the power:

"1. Ordinances. To enact or adopt all such ordinances, resolutions, and regulations, not repugnant to the constitution and laws of this state, as may be proper and necessary to carry into effect the powers granted to such municipality or as the general welfare of the municipality may require, and to repeal, alter, or amend the same. Fines, penalties, and forfeitures for the violation thereof may be provided within the limits specified in this chapter notwithstanding that such offense may be punishable also as a public offense under the laws of this state."

A city has only such powers as are granted to it by the statutes creating it. You will note that the section quoted provides that the governing body may enact such ordinances, resolutions, and regulations, not repugnant to the constitution and laws of this

state, as may be proper and necessary to carry into effect the powers granted to such municipality or as the general welfare of the municipality may require.

It may be assumed that the city authorities have power to safeguard the welfare of its inhabitants, such as police protection, sanitary conditions, the abatement of nuisances, and removal of conditions endangering the health and their general well-being. Even though such power may not be granted specifically, nevertheless, under the police power of the state and its political subdivisions, a city would have the implied power in emergency situations to take such action as may be necessary to relieve situations to which I have referred.

The question before us, however, as presented in your letter, is whether or not the housing condition in Bismarck, and particularly the attitude taken by some landlords towards their tenants, is of such a grave public nature as to come within the implied power of the city commission to declare an emergency and take such action as suggested by Mr. Simons to relieve the situation; that is, to appoint an assistant city attorney to represent the city in controversies between a landlord and his tenant.

Where landlords have adopted a practice which has become oppressive to a large number of tenants, residents of the municipality, the city commission would, of course, have a right to pass a resolution disapproving or even condemning such practice on the part of landlords, but we do not believe that the city commission would have the power under any statute, or even under the more or less understood police power, to employ an attorney to represent the tenants and to compensate him out of the city funds. While the purpose and object would be laudable and an altruistic undertaking, nevertheless, the situation would not authorize the city commission to expend public money for such a purpose because it would, in effect, be using public funds in aiding litigants in private law suits in which the issues are personal between landlord and tenant. To use city funds for such a purpose would be contrary to section 185 of the state constitution which provides that neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation, except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation.

However, the rent control committee could in good grace act in the capacity of a board of arbitration and could use persuasion and any legitimate argument to effect an amicable adjustment of controversies between landlords and tenants.

As a general rule, the ordinary citizen is susceptible to reason and common sense if approached in a proper and friendly manner, and it would seem that a policy employing such methods should go a long way in relieving the present housing situation.

There are not very many persons who care particularly about subjecting themselves to public censure and criticism because of unfair treatment of their fellowmen, but as a rule they are willing

to adopt a "give and take" policy in order to preserve a neighborly equilibrium of good will in dealing with their fellowmen.

However, so far as the city commission is concerned, this office must hold that it has not the authority under existing laws and the constitution of this state to appoint an assistant city attorney to represent tenants in eviction cases. A controversy between a landlord and his tenant is a private matter between them. Where the term of a tenant's lease has expired and the landlord has given him the notice required by law, it is the duty of the tenant to vacate, and he has no further legal rights. If he refuses to vacate and the landlord commences eviction proceedings, each party must employ his own counsel, and the city commission as such would have no legal right to interfere in favor of one or the other. Even if an attorney were employed by the city to appear in such cases, it would be against public policy for him to attempt, by high-pressure methods, to influence a court to render a decision which is clearly contrary to law.

It is the duty of the city commission under its legal powers to conduct the affairs of the city government, and it has only such powers as are granted by statute, either specifically or by clear implication, and in discharging its duties as the governing body of the city, the commission has no interest in private litigation between landlords and tenants or in any other private affairs between individuals. As already stated, the city commission as such may pass a resolution discountenancing Shylock methods employed by unreasonable landlords in dealing with their tenants and may publicly express their disapproval of the same, but, in our opinion, that is as far as the city commission can legally go under its statutory and constitutional powers.

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