

OPINION
47-66

September 26, 1947 (OPINION)

COUNTIES

RE: Commissioners No Authority to Discontinue County Agent's Office

Yours of the 24th, inst. stating that you are of the opinion that your Board of County Commissioners must appoint a successor to fill the vacancy in the position of County Agent in your county caused by the resignation of your former county agent, received. With this opinion we fully agree.

County agent work seems to have been introduced into this state under the provisions of chapter 117, Laws of 1913, sec. 2263, Compiled Laws of 1913. This Act was not very comprehensive. However, the Supreme Court in the case of Westlake v. Anderson, 33 N.D. 326, 156 N.W. 925 held that when petitioned properly the Board of County Commissioners must levy a tax for promotion of diversified farming, and that the Board had no discretion to discontinue such levy. This Act had no provision for a discontinuance of the levy.

The law of 1913 was first amended by chapter 117, Laws of 1917. This Act made specific provisions for a manner of discontinuance which was by petition and vote, not at the discretion of the Board.

The law was again amended by chapter 191, Laws of 1923. This Act also provided for a discontinuance of the county agent work by petition and election. The Legislature of 1925 made a further amendment, chapter 115, Laws of 1925, and again provided for discontinuance by petition and election.

No material change in the county agent law has been made since 1925. In 1932, the law was construed by the then Attorney General who held "that the board of county commissioners has no authority to discontinue county agent work by refusing to appoint a successor to fill a vacancy that has occurred through the resignation of the county agent or from any other cause." Attorney General's Report July 1, 1930, to June 30, 1932, page 214.

With this opinion we are in full accord. It is our opinion that the Board of County Commissioners has the legal duty to fill the vacancy caused by the resignation of your county agent as soon as an acceptable candidate can be secured.

NELS G. JOHNSON

Attorney General