

**OPINION
49-113**

April 12, 1949 (OPINION)

LICENSES

RE: County Fee for Dance Permit

I have your letter addressed to the Attorney General, dated 8th of April, 1949, in which you ask for an opinion as to whether or not it is permissible under the law for a county to charge a fee for issuing a dance permit.

Chapter 53-02 of the North Dakota Revised Code provides that in unorganized townships the county commissioners are the responsible authorities for the granting or refusing of a public dancing permit.

Black's Law Dictionary defines a permit as "A written license or a warrant issued by a person in authority empowering the grantee to do some act not forbidden by law, but not allowable without such authority."

In general terms a permit is nothing more than a license. In fact it is a license only a different nomenclature is being used which expresses the same meaning as a license.

The North Dakota legislature delegated to the governing body of municipalities the power to: In section 40-0501 (66) of 1943 Revised Code, "to license, tax and regulate public dances or public dance halls." The state delegated the responsibility to the county commissioners to either issue or refuse a dance permit in unorganized townships. A county is not considered the same as a municipal corporation. 20 CHS, Section 3 P.759, Note 63, makes a distinction. "Counties are involuntary subdivisions of the state; cities and other municipalities are voluntary."

It is my belief that when the state legislature granted the authority to the county commissioners to grant such dance permits, it meant to give to the commissioners the same power that the cities or village have. A county has only such powers and can perform such duties as are expressly or impliedly conferred or imposed upon it by constitutional or statutory provisions. It has been shown that the county commissioners were granted the authority to issue such dance permits.

As to the right to exact a fee for such permit, 33 AM. Jr. Sec. 64, P. 381, states: "The power and authority to license necessarily implies the right to fix the amount of the license fee, and under the authority to license the reasonable cost of granting a license may be properly charged to persons procuring it, although the power to do so is not expressly given." This establishes satisfactorily the right to exact a fee. Now as to the amount that can be charged by such permit the courts have held in general that the fee must not be unreasonable or discriminatory.

In conclusion it is my opinion that the county, through its county

commissioners, may charge a fee for issuing a dance permit in unorganized townships provided that the fees are not unreasonable or discriminatory.

WALLACE E. WARNER

Attorney General