

OPINION
52-20

July 28, 1952(OPINION)

COUNTIES

RE: Fees for Dance Hall Permit

Reference is made to your recent letter requesting the opinion as to whether or not it is permissible under North Dakota Law for a county to charge a fee for issuing a dance permit when the dance is to be held outside incorporated village or city limits in the county.

Section 40-0501(66) of the N.D.R.C. 1943 gives the governing body of municipalities the power "To license, tax, and regulate public dances or public dance halls;". The state delegates the responsibility to the county commissioners to either issue or refuse a dance permit in unorganized townships. A county is not considered to be the same as a municipal corporation or a municipality.

Corpus Juris Secundum, chapter 20, section 3, page 759 makes a distinction. "Counties are involuntary subdivisions of the state; cities and other municipalities are voluntary." Also see the definition of municipality in section 40-0101 of the N.D.R.C. of 1943.

I believe, however, that it was the intent of our Legislature to give to the county commissioners the same powers that the villages or cities have in the matter of granting dance permits.

Chapter 53-02 of the N.D.R.C. of 1943 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.

Generally speaking, a permit is nothing more than a license and as stated in thirty-two American Jurisprudence, section 64, page 381, "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."

It is our conclusion and opinion, therefore, that the county, through its county commissioners may charge a fee for issuing a dance permit in unorganized townships, provided that the fees are in line with the position our courts have held, in general that the fee must not be unreasonable and discriminatory.

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