

**OPINION  
54-114**

May 18, 1954 (OPINION)

**TAXATION**

RE: Memorial Fund - Distribution

You have requested an official opinion from this office as to whether or not the county commissioners may lawfully, under a changed or new resolution, disburse the funds in equal shares to the six American Legion posts in the county. You further enclose and state in your communication certain pertinent facts, to-wit: That on June 1, 1948, the board of county commissioners of Rolette County passed a resolution levying a tax under the provisions of chapter 11-32 of the North Dakota Revised Code of 1943 as amended. In that resolution the board of county commissioners further designated that the memorial to be erected would be a county office building to provide suitable space for county officers, court space, and a veterans' room.

Under this resolution the tax was levied. Then on December 4, 1951, the board of county commissioners, having theretofore made only a four-year levy, added another year in order to make up the five years permissible.

After this tax had thus been levied and collected, the board of county commissioners on November 19, 1952, passed a further resolution rescinding the former resolution as to the kind of a memorial to be erected and instead of building a county office building, the county commissioners determined to distribute this money equally among the American Legion posts in the county of Rolette which shall be chartered and recognized as active posts. The time has now come for distribution of this money and you ask the question, whether these funds must be used in erecting a county office memorial in commemoration of the people who lost their lives, as provided in the resolution levying the tax, or whether the present board of county commissioners may disburse the funds to the six American Legion posts of the county under a new resolution.

In connection with your communication you submit therewith a formal opinion issued by the then state's attorney Ralph B. Maxwell dated November 17, 1952, in which he holds that the board of county commissioners once having designated the kind of memorial to be erected, that they were now powerless to change the said form of memorial and that they were bound by their former resolution.

This office does not agree with that opinion. The statute authorizes the board of county commissioners to erect a memorial or memorials. The levy has been made to erect a memorial which memorial was to be in the form of a county office building. It is now proposed that the money be used for several memorials of a different type.

Until the money has been expended and contracts entered into, it is our opinion that it is within the province and authority of the county commissioners to change their former thought and designate the

kind of memorial or memorials for which this money is to be used.

The statute further provides that the board of county commissioners may join with a city, school district, or other public or private nonprofit corporations in the erection and operation of said memorial or memorials.

It is our opinion that if the American Legion posts qualify under the requirements of the statute as private nonprofit corporations, the board of county commissioners may join with them in the erection and operation of memorials.

In this opinion we have not passed upon the resolution or the agreement which was enclosed with your letter.

ELMO T. CHRISTIANSON

Attorney General