

OPINION
56-77

March 26, 1956 (OPINION)

MEMORIALS

RE: Cooperation Between City and County

We have received your letter of March 21, 1956, in which you state that there is a possibility of the city of Hillsboro joining with Traill County in the erection and operation of a Traill County Memorial Armory under the provisions of chapter 11-32 of the 1953 Supplement to the North Dakota Revised Code of 1943, as amended by chapter 118 of the 1955 Session Laws.

You state further that under such a plan certain facilities in such Memorial Armory building would be available to the veterans organizations as well as for other city, county and National Guard purposes. It was the intent of such persons that the county of Traill participate through the furnishing of a suitable tract of land now owned by it for a building site, and the actual building would be erected with city, state and federal funds that are available.

An opinion is requested from this office as to the authority of the city of Hillsboro to enter into such arrangements and whether the county of Traill has authority to furnish presently owned lots as a building site for such purposes.

We shall consider first your second question as to whether or not the county of Traill has authority to furnish presently owned lots as a building site for an armory to be designated as a memorial armory pursuant to section 11-3201 of the 1953 Supplement to the North Dakota Revised Code of 1943, as amended by chapter 118 of the Session Laws of 1955.

This section reads, in part, as follows:

* * * *Nothing herein contained shall be construed to prohibit said board from expending any additional moneys derived from sources other than taxation. Such memorial, or memorials, or other suitable recognition shall be erected within the county at a place determined upon by such board and when erected, shall be properly and permanently maintained.* * * *

A "memorial" may mean anything by which the memory of a person or event is portrayed or perpetuated. The Supreme Court of North Dakota has recognized in *Gehrke v. Board of County Commissioners of Divide County*, 58 N.D. 407, 226 N.W. 536, and *Ophaug v. Hildre*, 77 N.D. 221, 42 N.W.2d. 438 that the instances are numerous throughout the centuries where men have erected, for the purpose of commemorating some distinguished personage, or the occurrence of some great event, memorials consisting of halls, art galleries, libraries, institutions of learning, cathedrals, and other edifices or structures designed for human habitation, enjoyment and development.

We have no doubt that an armory would be looked upon as a suitable memorial to war veterans, and the above-quoted portion of section 11-3201 clearly gives the board of county commissioners authority to determine the site of such memorial within the county and also authorizes the board of county commissioners to expend moneys derived from funds donated to the county for the erection and maintenance of such memorial.

In determining whether or not a city has authority to enter into an agreement to participate in the construction and maintenance of a county memorial armory we find that section 40-0501(50) of the North Dakota Revised Code of 1943 provides that the governing body of a municipality shall have the power "to construct, operate, and maintain all public buildings necessary for use of the municipality."

Chapter 37-10 of the 1953 Supplement to the North Dakota Revised Code of 1943 provides, in part, as follows:

* * * *Subject to appropriations herein made by the legislature, the board (board of armory supervisors) is authorized to make allocations not to exceed twenty thousand dollars for a single unit armory, and not to exceed forty thousand dollars for a multiple unit armory, in collaboration with the federal funds made available under the armory construction program as provided for in Public Law 783, 81st Congress, chapter 945, 2nd Session, approved September 11, 1950; and in collaboration with funds made available by municipalities or counties wherein the armories are to be located; and provided, further, that the affected municipalities or counties make available an equal amount of money or facilities.* * * *"

Chapter 21-03 of the 1953 Supplement to the North Dakota Revised Code of 1943 provides in section 21-0306(2)(a) as follows:

Municipalities are empowered to borrow money, subject to the general limitations of amounts prescribed by sections 21-0304 and 21-0305, and subject, in certain cases, to the further limitations prescribed by this section, and to issue bonds thereof for the purposes enumerated in this section. Such bonds may be issued:

* * *

2. By any city:

- a. for the erection, purchase, construction, enlargement, or repair of municipal or public buildings for the following purposes: city halls, fire protection buildings, waterworks buildings, police stations, city markets, public baths, hospitals, libraries, museums, auditoriums, armories gymnasiums, and music halls; and to purchase and acquire sites for such buildings, and for the equipment and furnishings thereof;"

Based on the foregoing statutes we believe there is clear authority for a city to enter into an agreement to participate in the

construction and maintenance of a county memorial armory.

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