

OPINION
56-78

November 15, 1956 (OPINION)

COUNTY MEMORIALS

RE: Use of Funds - Selection of

This is in reply to your letter of November 7, 1956, requesting an opinion of this office in regard to the use of county memorial funds raised by tax levy pursuant to section 11-3201 of the 1953 Supplement to the N.D.R.C. of 1943 as amended to date.

Your specific questions are stated as follows:

- "1. Is a courthouse a memorial within the meaning of the section as amended.?"
- "2. Is the selection of the type of memorial entirely in the control of the Board of County Commissioners?"
- "3. Has the Board of County Commissioners power or authority to allocate any such funds raised under the provisions of the section to veterans' organizations; or is not such allocation contrary to the statute according to the decision in Hart v. Bye, 76 N.W. 2d., 139?"
- "4. Does this section prohibit the erection by the county of various memorials throughout the county, especially in view of the fact that the levy was made for the purpose of erecting a memorial courthouse?"

Your first question must be answered in the affirmative, i.e., a courthouse is a suitable and appropriate memorial consistent with the purposes of the statute (See: Ophaug v. Hildre, 77 N.D. 221, 42 N.W. 2d. 438).

In answer to your second question, we call your attention to the fact that the statute gives the board of county commissioners power to erect a memorial or memorials or other suitable recognition. No other person, organization or entity is given authority to select the type of memorial to be erected. Obviously, the question of whether the commissioners have abused their discretion in the choice of a memorial is subject to judicial review as was the case in Ophaug v. Hildre (supr) and in Hart v. Bye, 76 N.W. 2d. 139. However, as was stated in Hart v. Bye, "The statute vests in the board a broad discretion with respect to expenditure. * * *"

The answer to your third question is necessarily dependent upon the meaning given the word "allocate". The language of the case of Hart v. Bye (supra) is quite specific on this point. At page 143 of that decision (in the N.W. 2d. Reporter) the court states:

"* * * The resolution of November 19, 1952, purports to divide the money among the Legion Posts of Rolette County. Such a

disposition of the memorial fund is clearly violative of Chapter 125, S.L.N.D. 1947, in that it attempts to vest in organizations other than the board of county commissioners the spending of the money in derogation of the specific terms of the statute. That resolution is therefore wholly void and the court's judgment with respect thereto is correct."

Thus the moneys in the county memorial fund cannot be divided and given to the legion posts in the county. However, we find nothing in the language of the statute or of the decision that would indicate that the board of county commissioners could not determine to erect several memorials throughout the county, to allocate a portion of the county memorial fund to each such memorial and to accept the advice and assistance of persons, corporations or associations in the supervision of the erection of same.

In reply to your last question, it is our opinion that there is no prohibition of the erection by the county of various memorials throughout the county, whether or not the levy was in the words of the question "made for the purpose of erecting a memorial courthouse". In the language of Hart v. Bye (supra) (at page 144 of the N.W. 2d. Reporter) we find the statement:

" * * * When the tenor of the whole statute is considered, it seems clear that the discretion of the board as to how the money is to be spent may not be exercised until the time has come to make the expenditure. That is the proper time to determine the needs of the community and the appropriateness of the memorial to be erected. * * *"

The statutory provision specifically authorizes and refers to the erection of a memorial or memorials or other suitable recognition. It is therefore our conclusion that the board of county commissioners is given discretion as to whether one or more memorials will be erected.

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