OPINION
58-69

April 8, 1958 (OPINION)

COUNTY COMMISSIONERS

RE: Authority to Provide Electricity for Courthouse

We have your letter of April 1, 1958, in which you requested an opinion on whether the county may legally build and operate its own transmission lines to the city limits for the purpose of purchasing electricity from a rural electric cooperative. We assume that the electricity would be purchased for the use of the county, that the county's electricity needs are at present fulfilled by the public utility which has the franchise for the city, and that the rural electric cooperative from whom the contemplated purchases are to be made does not have a franchise to render service within the city limits, but does have a franchise to serve the rural areas adjacent to the city.

Section 11-1111 of the N.D.R.C. of 1943 provides that the county commissioners shall have the duty of superintending the fiscal affairs of the county. Section 11-1114 of the N.D.R.C. of 1943 provides under subsection 9 of the county commissioners shall furnish to the county officers the necessary telephone, postage, telephone and telegraph tolls, "and all other things necessary and incidental to the performance of the duties of their respective offices."

Certainly electricity is "necessary and incidental" to the performance of the duties of county officers. As such, it must be furnished by the commissioners, who, since they have the duty of supervising the fiscal affairs of the county, should furnish the electricity to the county officers by a method which is most economical to the county.

If the commissioners can furnish the electricity most economically by building a transmission line to a power company located outside the franchised area within which they are presently being serviced, then it is the opinion of the Attorney General that they have not only a legal right but a legal duty to do so.

We believe that our opinion is reinforced by the holding of the court in City of Grafton v. Otter Tail Power Co. 86 N.W. 2d. 197 (N.D. 1957). In that case, the State School was permitted to purchase electric power from a company outside the area served exclusively by the municipal power plant, even though the municipal plant had the capacity for adequately serving the school's needs and even though it meant that the power was being furnished by a company to an area outside of that for which it held the franchise. The case is distinguishable, of course, on the basis that the Board of Administration which entered into the contract on behalf of the school was considered to be the state, while Williams County is a subdivision of the state. We do not believe, however, that this distinction invalidates the otherwise applicable principles states therein.

LESLIE R. BURGUM

Attorney General