

**OPINION  
58-70**

April 10, 1958 (OPINION)

COUNTY COMMISSIONERS

RE: Authority to Sell Merchandise at Courthouse

This is an answer to your letter of April 7, 1958, requesting the opinion of this office on several questions relating to the authority of the county commissioners and the county auditor to purchase and sell atlases.

Your questions appear as follows:

1. Would it be legal for the commissioners of the county to purchase such atlases and resell them through the office of the county auditor at a profit to the county?
2. Would it be permissible for the county to buy the atlases and sell them at cost to the various citizens of the county?
3. Would it be lawful for the county auditor to purchase the atlases and resell them at a profit, using their own private funds, but sell them through her office at the courthouse?
4. Would it be lawful for the county auditor, either upon specific authorization or on her own initiative, to permit the company publishing the atlases to leave a supply at the courthouse to be sold at a given price provided neither the county nor the county auditor derived a profit therefrom?

Your questions will be answered below in respective order:

1. It has been well established in this jurisdiction and outside jurisdictions that county commissioners can exercise only those powers conferred upon them by organic or statutory laws, or such as may arise by necessary implication from an express power. The statutory powers of a board of county commissioners is set out in section 11-1114 of the N.D.R.C. of 1943 and the 1957 Supplement thereto. We find no authority expressed, nor that can be fairly implied, conferred upon the county commissioners that authorize a sales venture of this type.
2. For the same reason as stated in answer No. 1, we find no authority for such transaction whether it be for profit or non-profit.
3. Under chapter 11-13 of the N.D.R.C. of 1943, which prescribes the powers and duties of the county auditor, we find no authority expressed or implied that would permit the county auditor to engage in the buying and selling of

atlases. It is established that a county auditor has only such authority as is expressed or can be reasonably implied by statute.

4. It would not be lawful for the county to permit the use of the office of the county auditor to be used for the sale of goods of a private company for private profit. (See Section 185 of the Constitution of North Dakota).

It is, therefore, the opinion of this office that the county neither through the board of county commissioners nor the office of the county auditor, may buy and sell atlases whether it be profit or non-profit.

LESLIE R. BURGUM

Attorney General