

**OPINION
68-43**

May 9, 1968 (OPINION)

Mr. Richard B. Thomas

State's Attorney

Ward County

RE: Counties - Buildings - Funds

This is in response to your letter in which you state that the county commissioners are desirous of building a highway shop building to serve as offices of the Ward County Highway Department. You also advise that the county commissioners have hired an architect to draw the plans and the bid was let for construction with the understanding and agreement that the contractor would not begin work until after the annual budget was adopted for the fiscal year 1969. The estimated cost of the building is \$160,000.00.

You further advised that from the recommendation from your office the commissioners deferred on making a decision on the building until the fiscal year 1969 budget is adopted and the estimated cost of the building is included therein. You further advise that the funds to construct this building will be available. The board has requested you to seek confirmation of your opinion and accordingly you are asking for our opinion on this subject.

Section 11-11-16 of the North Dakota Century Code provides as follows:

BOARD HAS POWER TO ERECT, REPAIR, AND MAINTAIN BUILDINGS FROM CURRENT REVENUE. The board of county commissioners may provide for the purchase, erection, repair, and maintenance of the courthouse, hospitals, jails, and other necessary buildings within and for the county. It may purchase the sites for such county buildings if necessary and may make contracts on behalf of the county for the building, repairing, and maintaining thereof if the expenditures therefor are not greater than can be paid out of the revenue of the county for the current year. The board shall have the entire supervision of the construction of such buildings."

It is noted that the above section authorizes the county commissioners to acquire a site and to construct buildings thereon if the expenditures therefor can be paid out of the revenue of the county for the current year. In this respect you should also observe the provisions of section 11-11-18 of the North Dakota Century Code, which set up the procedures to be followed in the event that the expenditure will exceed the revenues produced from the annual tax levies.

In your letter you did not state whether or not the site upon which the buildings is to be constructed belongs to the county or is a site which must be obtained. In this respect, section 11-11-19 of the

North Dakota Century Code suggests that the obtaining of a site for purposes other than those stated in said section must first obtain the approval of the electorate.

Assuming that the site upon which the building is to be constructed belongs to the county, and assuming further that the county commissioners will not enter into any binding contract or expend any money toward such project until they have budgeted for same, the county commissioners have the authority to construct a building if the cost thereof can be paid from the revenues produced as a result of tax levies for any one year, or if funds are available to pay for the cost of constructing such building without obligating any future revenues of the county.

It is therefore our opinion that if the county commissioners budget for such building and have money on hand to pay for same, or the revenue is produced in the current year, the commissioners have the authority to construct and pay for said building.

HELGI JOHANNESON

Attorney General