

**OPINION
69-126**

August 28, 1969 (OPINION)

Honorable Richard W. Goldberg

State Senator, Twenty-first Dist.

Fargo, North Dakota

RE: Counties - Purchasing Office - No Authority to Create

This is in response to your letter in which you ask for an opinion on the subject matter contained in letters written by Attorney William Strehlow, dated July 28, 1969, and an opinion issued by the State's Attorney of Cass County, Eugene A. Kruger. The question as we understand it is whether or not the Board of County Commissioners may create an office such as Accounts and Purchases with the authority to make certain purchases on behalf of the county. Alternatively, the question is whether or not the County Commissioners may employ or hire a clerk to assist the Board and carry out its functions.

Section 11-10-21 provides as follows:

COMMITTEE TO PURCHASE CERTAIN SUPPLIES FOR COUNTY. The county auditor, county treasurer, and the chairman of the board of county commissioners, or such other member of the board as may be designated thereby, shall constitute a committee which shall purchase and provide all necessary blanks, books, and other stationery for the use in their official capacities of all county officers and emergency supplies and equipment required by the county."

From its provisions it can easily be determined that a committee was created to purchase and provide all necessary blanks, books, and other stationery for the use of the county officers in their official capacity and to purchase emergency supplies and equipment required by the county. The North Dakota Supreme Court had under consideration a question which involved section 11-10-21 in the case of Knight v. Commissioners of Cass County, 14 N.D. 340, 103 N.W. 940. The Court, amongst other things, recognized that this section is explicit in its language and vests the power of making certain purchases with the committee and also vests the power to make certain purchases as provided for in section 11-11-26 with the County Commissioners. There are, in effect, two provisions which relate to purchasing material. Section 11-11-26 provides as follows:

WHEN BOARD SHALL ADVERTISE FOR BIDS. When the amount to be paid during the current year for the erection of county buildings, for the purchase of fuel, or for election ballots and supplies, exceeds one thousand dollars, the board of county commissioners shall cause an advertisement for bids to be published at least once each week for two successive weeks in the official newspaper of the county and in such other newspapers as it shall deem advisable. The first publication shall be made at least thirty days prior to the day set for the

opening of bids."

This is a responsibility imposed upon the commissioners which may not be delegated. Neither can the responsibility and duties imposed upon the committee under section 11-10-21 be delegated by the County Commissioners to some other person or persons.

The authority to create a new office is vested in the Legislature and in the Constitution. The creation of such office could be accomplished by either or both.

We must also remember that all political subdivisions have only such powers as are granted to them or are necessarily implied from the grant.

It is therefore our opinion that the Board of County Commissioners is without authority to create an office such as the Office of Accounts and Purchases with the specific duty and responsibility of making purchases on behalf of the county. This responsibility is imposed upon the committee under section 11-10-21 for certain material and upon the Board of County Commissioners under section 11-11-26 for certain material and cannot be delegated to some other body.

The Board of County Commissioners, however, under section 11-10-11 has the authority to determine by a resolution the number and salaries of deputy clerks and assistants for the various county offices. This would appear that the County Commissioners could create a clerical position to assist in the purchasing of material for the county. such clerical position could serve both the committee and the Board of County Commissioners. The person filling the clerical position would necessarily have to work under the direction of the purchasing committee in one instance and under the Board of County Commissioners in other instances. It would have only such administrative functions as the committee or Board shall delegate. The County Commissioners could determine the salary to such position. However, in no event may the committee or the Board of County Commissioners vest its responsibility or abrogate its duty to the person filling the clerical position. The legal responsibility would at all times rest with the committee or the Board of County Commissioners respectively even though the person filling the clerical position actually performs the administrative services and takes other action pursuant to the directive either from the purchasing committee or the Board of County Commissioners.

It is our further opinion that the Board of County Commissioners may create a clerical position to assist the purchasing committee as constituted under section 11-10-21, or the County Commissioners with its purchases under section 11-11-26; but the legal responsibility for any actions taken remains with the purchasing committee or the Board of County Commissioners as the case may be.

The clerical position as a matter of law would only perform the mechanical and administrative functions as per the direction of either the committee or the Board of County Commissioners and would be assisting them in carrying out their respective duties and functions.

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