

LETTER OPINION
93-L-274

September 17, 1993

Mr. Dennis E. Johnson
McKenzie County State's Attorney
P.O. Box 1288
Watford City, ND 58854

Dear Mr. Johnson:

Thank you for your letter asking whether a county may, with general fund money, either alone or jointly with a city, construct a building for a county library and other "facilities for the general civic and public use, health, and well being", whether a motion passed by a board of county commissioners on the necessity of a building under N.D.C.C. ? 11-11-16 is controlling on what buildings are necessary, and whether a county may give general fund money to another political subdivision to aid that political subdivision in making repairs or improvements to existing public buildings or facilities.

In North Dakota, counties are creatures of the constitution and may speak and act only in the manner and on the matters prescribed by the Legislature in statutes enacted pursuant to constitutional authority. County of Stutsman v. State Historical Society of North Dakota, 371 N.W.2d 321, 329 (N.D. 1985). The counties are political subdivisions of the state. The authority of the county commissioners and of the administrative county officers in the management of the business affairs of the county is prescribed by statute. Ulrich v. Amerada Petroleum Corporation, 66 N.W.2d 397, 399 (N.D. 1954).

The procedure for a county to enter into providing library services is contained in N.D.C.C. ch. 40-38. That chapter, by its own terms, provides that it is the only method by which political subdivisions

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mentioned therein can jointly provide library services. N.D.C.C. ? 40-38-11(1) and (9). Furthermore, N.D.C.C. ch. 40-38 is the only procedure provided by statute for a county to individually provide library services. It is therefore my opinion that a county may not provide library services, including building a building therefor, unless it follows the provisions of N.D.C.C. ch. 40-38.

Being a creature of the law, a county must have statutory authority to construct a building for "the general civic and public use, health, and well being."

If there is statutory authority for constructing such a building, the exact nature of which is rather nebulous from your description, then the county commission can declare it necessary under N.D.C.C. ? 11-11-16. But if there is no authority for a county to conduct a service or program relating to the general civic and public use, health and well being, then no building designed to be used for that service or program is necessary and it may not be declared to be necessary and built by a county commission.

County building authority provided by law includes a county courthouse, hospital, jail, and other "necessary" buildings (N.D.C.C. ? 11-11-16), county fair buildings (N.D.C.C. ? 4-02-31), or park buildings where the county commission is participating as part of the board of park commissioners (N.D.C.C. ? 11-28-05.1). County responsibility for the construction and maintenance of roads and highways would make buildings for county road machinery and personnel a needed structure. 1982 N.D. Op. Att'y Gen. 174; see Brusegaard v. Schroeder, 201 N.W.2d 899 (N.D. 1972).

I find no statutory authority for a county to build a building for "the general civic and public use, health, and well being." I cannot determine whether such a phrase falls within any recognized statutory duty or function of a county under North Dakota law. It is therefore my opinion that a county commission determination that a county building is necessary is legally sufficient to build such a building only if there is statutory authority for a county to participate in the program or function in question and

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the statute specifies or implies authority to build a building in conjunction therewith. See 1959 N.D. Op. Att'y Gen. 121.

Whether a county may give general fund money to another political subdivision to help repair or improve an existing public facility again depends on the existence of statutory authority for a county to make such a donation. Even though such a donation may not violate Article X, Section 18 of the North Dakota Constitution, because the recipient is a government entity, the county still may act only in conformance with statutory authority. See Letter from Attorney General Nicholas J. Spaeth to Mayor Eugene Belisle (April 7, 1992).

It is therefore my opinion that a county may donate general fund money to another political subdivision only pursuant to statutory authority for such a donation. I find no such authority in statute for a county to donate general fund money to another political subdivision to repair or improve that other political subdivision's public facility.

Although I did not find statutory authority for your county alone to undertake its apparent desires, the county might wish to clarify its desires and make them specific in order to determine if it can take advantage of newly enacted N.D.C.C. chs. 54-40.3, 54-40.4, or 54-40.5. One of these three chapters might be useful to your county for accomplishing its goals if it works with another political subdivision having the desired program authority. I commend those three chapters of North Dakota law to your reading and analysis in light of your county's specific goals and the authority of neighboring political subdivisions.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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