

**OPINION**  
**51-31**

June 11, 1951            (OPINION)

COUNTIES

RE: County Commission Powers

The question your board of county commissioners left for the Attorney General to answer the other day has been referred to the undersigned for attention and reply.

You ask whether or not in our opinion the board of county commissioners has the authority to enter into a contract with anyone for the purpose of starting a law suit aimed at getting a reversal of the holding of the North Dakota Supreme Court that counties cannot reserve unto themselves fifty percent of mineral rights in tax deeds issued by the county to individuals, and to agree that the party instituting such action shall have ten percent of all mineral rights thus restored to the county.

We do not believe your board of county commissioners has any power or right to enter into such a contract. Although county boards have implied power to employ agents in proper cases, they have no power to employ agents to perform acts which the board is unauthorized to do or to perform acts which are a part of the official duty imposed by statute on some other county or state officer. We believe it is the duty of the attorney general, his assistants, and the various states attorneys to institute and prosecute such actions if they feel public policy demands it and a cause of action exists. We believe further that a contract of this character is contrary to sound public policy unless expressly warranted by legislative authority and we know of no such authority.

In the case of *Murphy v. Swanson*, 50 ND 788, the board of county commissioners sought to hire a tax-ferret on a percentage basis. In the case the court had this say:

First, a board of county commissioners has only such implied powers as are reasonably necessary to enable it to exercise and perform those powers and duties which are expressly granted to and imposed upon it. Second, a board of county commissioners has no implied authority to contract with private persons for the performance of duties imposed by law no public officers.

We, therefore, believe that your board of county commissioners would have no power or authority to enter into such a contract.

ELMO T. CHRISTIANSON

Attorney General