

**OPINION
71-102**

January 26, 1971 (OPINION)

Mr. A. S. Benson
State's Attorney
Bottineau County

RE: Counties - Fairs - Mill Levy for Buildings

This is in response to your letter in which you make reference to Section 4-02-32 of the North Dakota Century Code. You further advise that the County Fair Board has met with the Board of County Commissioners and has inquired as to its right to construct a building which would apparently cost in the neighborhood of \$30,000 and would include, among other things, bathroom facilities and connection with a sewer line.

You then ask the following:

- "1. May the Board of County Commissioners levy a tax of not to exceed one-half mill per year to raise the necessary amount for the payment of this building without a vote of the people.
2. If the Board of County Commissioners have the right to levy a one-half mill for this purpose, may this fund be cumulative. In other words, may the fund run for a number of years so that the money can be raised for this purpose without any limitation.
3. Money has to be paid back in five equal payments according to this section of the law, does this mean that the limitation and the sale of warrants have to be limited to the five equal installment payments or may the commissioners accumulate this money to, we'll say, one-half of the amount for the building and sell warrants for the balance.
4. The question of an architect has come up, and I have advised that under the law an architect would have to be used for the public building as long as the price is over the amount of the limitation imposed by statute. Would you please confirm this.
5. If this is permissible, namely for the County Commissioners to levy a tax up to one-half mill for this purpose, do the County Commissioners or the Fair Board do the contracting for the building, or will this fall into the hands of the County Commissioners."

The information you submitted does not disclose whether or not an election was held to acquire by lease or purchase the land upon which the building is to be constructed. This becomes significant because Section 4-02-32 must be construed together with Section 4-02-31.

These sections are all part of Chapter 102 of the 1919 Session Laws. Section 4-02-32 relates to and is dependent upon Section 4-02-31, especially the opening or first sentence. This in effect requires that the question whether or not land upon which the building is to be constructed must be submitted to the electorate and receive a favorable vote. The Legislature in employing the language in Section 4-02-31 must have been under the impression that a favorable vote on the question of purchase or leasing land included the question of expending money for the construction of a building.

Thus, in direct response to the first question, it is our opinion that the question must be submitted to the electorate and receive a favorable vote before the county commissioners may levy a one-half mill tax for the purpose of acquiring or leasing land and constructing a building as you outlined. It is conceivable that such election may have been held in a prior year. If so, it will then satisfy Section 4-02-31.

As to question no. 2, Section 184 of the North Dakota Constitution requires that before any indebtedness may be incurred, an irrepealable tax must be levied to pay the interest and principal as same becomes due. The purchase of an item as you outlined on the installment plan as contemplated by Section 4-02-32 and the issuance of warrant amounts to an indebtedness within the purview of Section 184 of the North Dakota Constitution. The language of Section 4-02-32 "not to exceed one-half mill levy in any one year" if read separately could be construed to mean for one year only; but by considering the context in which it is found and used, and the other provisions of this section, it is clearly indicated that it means for more than one year, but may not exceed a one-half mill levy in any one year. The installment limitation (five years) appeared to be controlling in this respect. In direct response to question no. 2, it is our opinion that the one-half mill levy may be imposed each year, but not to exceed five years.

As to question no. 3, Section 4-02-32 authorizes the use of general fund money and if same is not sufficient to pay the indebtedness, the one-half mill levy may be imposed for such purposes. It is conceivable that the county commissioners could provide for such building fund in the general budget if the financial conditions in the county budget permit and if it can be done by staying within the tax limits independent of the one-half mill tax levy. However, if this is not permissible, then the five-year, one-half mill levy would be for such purposes only. Indirectly, Section 4-02-32 limits the amount of money which may be raised. In direct response to question no. 3, it is our opinion that the amount of the warrants would be limited to the revenues which may be produced by levying a one-half mill tax over a period of five years.

As to question no. 4, if the total cost of the construction of the building including the purchase of land exceeds \$12,000, in our opinion, the procedures and provisions of Chapter 48-02 would govern.

As to question no. 5, Section 4-02-31 provides that the county commissioners shall construct buildings and make improvements. We have earlier set out reasons why Section 4-02-31 and 4-02-32 must be construed together and need not be repeated here. In direct response

to question no. 5, it is our opinion that the county commissioners would have the authority and responsibility to contract for the purchase or lease of the land if necessary and to construct or improve any buildings thereon.

HELGI JOHANNESON

Attorney General