

Date Issued: March 13, 1981 (AGO 81-26)

Requested by: Jay V. Brovold, Billings County State's Attorney

- QUESTION PRESENTED -

Whether a board of county commissioners must submit to the electors of the county at a regular or special election a proposal for the construction of a new county courthouse when the proposed expenditure is not greater in amount than can be provided for by the annual tax levies.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a board of county commissioners need not submit a proposal for the construction of a new county courthouse to the electors of the county at a regular or special election when the proposed expenditure is not greater in amount than can be provided for by the annual tax levies.

- ANALYSIS -

Section 11-11-16 of the North Dakota Century Code grants the board of county commissioners the power to erect, repair and maintain buildings from current revenue. Section 11-11-18, N.D.C.C., requires the board to submit any extraordinary outlay of money to a vote of the electors. This section states:

The board of county commissioners shall submit to the electors of the county at any regular or special election any proposal for an extraordinary outlay of money by the county when the proposed expenditure is greater in amount than can be provided for by the annual tax levies. If the board considers the courthouse, jail, or other public buildings of the county inadequate for the needs of the county or deems it necessary to build a county hospital, and if it is thought that it is not for the best interests of the county to issue bonds to aid in the construction of such buildings or that the construction of such buildings by any other procedure is not for the best interests of the county, it shall submit to the electors of the county at any regular or special election, the proposal for the construction of a courthouse, jail, or other public building by establishing a building fund to aid in the construction thereof. The requirements of this section shall not apply to lease-purchase agreements authorized by section 24-05-04. (Emphasis supplied).

There is an extraordinary outlay of money when the proposed expense is greater than the funds provided for by annual tax levies. If a proposition calls for an extraordinary outlay of money, then it must be submitted to a vote of the electors of the county. Schoonover v. Morton County, 267 N.W.2d. 819 (N.D. 1978). The North Dakota Supreme Court in McKinnon v. Robinson, 139 N.W. 580 (N.D. 1913), found that a board of county

commissioners had exceeded its statutory authority by contracting for the construction of a county courthouse without prior approval by a vote of the people when there were insufficient funds available from the annual tax levies to pay for the costs. The Supreme Court found this to be an extraordinary outlay of money requiring a vote of the people. The Supreme Court did, however, indicate in dictum, that had there been sufficient funds available to cover the costs, no vote would have been required. The court stated:

It is asserted, the correctness of which assertion we think must be conceded, that the construction of the proposed new courthouse involves an extraordinary expenditure of public funds necessitating a prior favorable vote of the electors of the county, unless, perhaps, as contended by respondents, that there are sufficient available funds, including the tax levy for the current year, to defray the cost thereof. 139 N.W.2d. 580, 585.

North Dakota statutory law has given boards of county commissioners the authority to erect buildings from current revenue and provides that a proposal must be submitted to a vote of the electors of the county only if it is an extraordinary expense.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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