

OPINION
59-56

September 25, 1959 (OPINION)

COUNTIES

RE: Memorials - Joining With Another Entity - Expending of Memorial
Fund - Responsibility of County

This is in reply to your request for an opinion relating to the expenditure of memorial levy funds. You ask, does chapter 11-11 of the North Dakota Revised Code of 1943 as amended governing the construction and erection of buildings by counties in excess of one thousand dollars control where the county joins with a park board or some other entity in constructing or erecting such memorial.

I presume you refer to section 11-3203 which provides that the county commissioners,

. . . . may join with a city, school district or other public or private nonprofit corporation or agency, in the erection and operation of said memorial, or memorials"

The term "may join" might be subject to various meanings. However, the acceptable legal meaning ascribed to such term is that it means: to connect; to unite; to combine or unite in time, effort, or action; to come together; to come together so as to be united and connected; to act together; to enter into association or alliance; to form a union.

The county in joining with another entity is still responsible for the manner in which the money is to be expended. We do not believe, in absence of statutory authority, that the county can delegate its responsibility as to the statutory procedure and manner in which such funds may be expended. By joining with another entity the county is not relieved of its responsibility. By such joining, the county merely combines its time, effort and money with the time, effort and money of another entity. Each entity is still responsible to its people to comply with whatever procedure is required in expending their money. In joining with another entity it (county or other entity) also assumes additional requirements that such entity might have relating to the expenditure of money. The revenue involved does not lose its identity. It is still county revenue raised for a certain purpose which can be expended only by complying with the statutory procedure relating thereto.

The laws relating to notice advertising for bids, accepting bids, etc., involving the construction of buildings as found in chapter 11-11 are designed for the benefit and protection of the public to prevent misapplication of revenue and erroneous expenditure of public moneys. In some ways it is a mutual problem.

The laws relating to expenditure of money by each entity must be complied with unless there is a statutory provision to the contrary.

On some matters there are statutes providing that certain sales and transactions must be accomplished by public notice, bidding, etc. unless it is accomplished through certain governmental boards.

However, in the instant matter we have no such statutory provision, nor is there an implication that the statutory provisions relating to notice and letting of bids, etc. do not apply when such entity joins with another entity.

It is noted that the statute permits the county to join with other public or private nonprofit corporation or agency in addition to joining a school district, etc. It would not seem permissible for a county to avoid complying with chapter 11-11 where the county joined with a private nonprofit corporation.

From the foregoing it is our opinion that the county is required to comply with the statutory provisions relating to the expenditure of public moneys in connection with the construction or erecting of buildings.

It is further our opinion that the statutory provisions relating to each entity must be followed. For example, one statutory provision relating to one entity like the posting of notice for two consecutive weeks and the other statutory provision relating to the other entity requires posting a notice for three consecutive weeks. In such instance the three weeks' notice would have to be followed. The lesser requirement can be included in the greater requirement. In reference to the letting of bids where part of labor and material are donated, we are unable to find any exception to the statutory provision. If the amount of money expended will be equal to or exceed a certain given amount the provisions of the statute will have to be followed. In advertising for bids where labor and material are donated, such should be made part of the letting and necessary adjustment should be made. As to the cost of advertising, etc., and by whom such cost will be absorbed, it is our opinion that where the statutes relating to one entity require a greater notice, then the cost relating thereto should be adjusted and borne on a proportionate share. For example, an entity requiring three weeks' notice and the other two weeks' notice, the cost for the two weeks' notice can be borne equally by the two entities, but the cost for the third week's notice should be borne by the entity which is required to give notice for three weeks.

LESLIE R. BURGUM

Attorney General