

**OPINION
70-117**

June 4, 1970(OPINION)

Mr. Albert J. Hardy
Assistant State's Attorney
Stark County

RE: Counties - Housing Authority - County Commissioners May Not Invest

This is in reply to your letter of May 15, 1970, wherein you request our opinion as to the legality of a chairman of a board of county commissioners investing a county housing authority under the Housing and Urban Development Act.

Section 12-10-06 of the North Dakota Century Code provides that no public officer authorized to sell or lease any property, or make any contract in his official capacity, shall become voluntarily involved in such sale, lease, or contract, either directly or indirectly. This provision, therefore, is applicable to a member of a board of county commissioners.

Section 23-11-33 of the North Dakota Century Code, in part, provides that a county shall have the right and power to cooperate with housing authorities with respect to the development or administration of projects to assure the availability of safe and sanitary dwellings in projects aimed at housing persons engaged in national defense activities and veterans housing projects. In this regard it can be assumed that the county can, for example, contract with the housing authority to provide services to a particular project. If a board of county commissioners is capable of contracting with a housing authority, then it would follow that the commissioners, either collectively or individually, would be prohibited from investing in such housing authority for the reason that in so doing they would be involved, either directly or indirectly in such a contract.

Although a county housing authority must be composed of commissioners whose membership is separate and distinct from that of the board of county commissioners, such housing authority is nevertheless an administrative body of the county government, deriving its functional existence only by resolution of the board of county commissioners. Imposed on both bodies is the responsibility of the public trust. Aside from the ability to contract with a housing authority, a board of county commissioners exercises certain powers, such as taxation and zoning, which can have a direct effect on the activities of a county housing authority. The import of the law in this regard is to restrict the interference and possible conflict of private interests of a public official with those duties and responsibilities imposed on him in his position of a public trustee.

It is, therefore, our opinion that a member of a board of county commissioners is prohibited from investing in a county housing authority for reasons heretofore discussed.

HELGI JOHANNESON
Attorney General