

**OPINION
70-91**

December 29, 1970(OPINION)

Mr. Dale H. Jensen
State's Attorney
Burleigh County Courthouse

RE: Counties - Commissioners - Portfolio Government

This is in response to your letter in which you state as follows:

The question has come up with regard to Portfolio Type Government. As you know, Burleigh County elected their commissioners at large and there is a question as to the operation of the County Commission now that there is no longer any districts in Burleigh County. The question for your opinion is, are there any objections to Portfolio Type Government at the county level.

It appears that the county commissioners wish, as of the first of the year, to divide the county into certain portfolios and have each of the commissioners handle certain portfolios wherein they will be responsible for a partial segment of the county government.

There is also a question as to whether or not they may divide up the county into areas as far as roadwork."

The county commissioners, pursuant to chapter 11-11 and other related provisions, are given certain powers and authority as a board of commissioners. Nowhere in the laws pertaining to county commissioners do we find any authority for individual commissioners to act separately. However, to the contrary the courts have held that the county commissioners can act only as a board and that the board must act collectively. See State ex rel. Kopriva v. Larson, 48 N.D. 1144, 189 N.W. 616 and Rolette State Bank v. Rolette County 56 N.D. 571, 218 N.W. 67.

From these authorities it is clear that the board of county commissioners may exercise such authority only as a board collectively and not as individual members of the board.

The term "portfolio" has various meanings and its true meaning can be determined only from the context in which it is used. Assuming that you mean by portfolio type government, that individual commissioners will be assigned certain responsibilities such as roads, police, welfare, sanitation and health with the authority to act in such matters, then our answer would be in the negative. The board of county commissioners may not assign or delegate its responsibilities to individual commissioners. However, if this term is used to mean only to assign certain governmental functions within areas to a commissioner for purposes of making a study or recommendation and reporting back to the full commission we would find no objection of such procedure. However, the individual commissioner who is assigned certain governmental activities could not take any final action. Any action must be taken by the full board.

By way of example, the county commissioners may delegate the responsibility of studying tax matters or budget matters to one commissioner who would report back to the commission with findings and recommendations. The board as a whole can then take whatever action is deemed appropriate within the authority granted to the board.

The board is also charged with the responsibility of constructing and maintaining county roads. The board cannot delegate to one individual commissioner the responsibility of constructing or maintaining roads in a certain area. Such action would have to be taken by the board as distinguished from an individual commissioner. However, the board can set up certain priorities for the construction of roads and designate the areas in which road construction or maintenance is to be accomplished. It may as a board designate

certain commissioners in certain areas to supervise the action taken by the board, but such commissioner may not assume a greater responsibility or take definitive action on matters involved by the board.

By way of example, if the County commissioners decided to build a road setting forth the distance, location, and specifications and has entered into a legal, proper contract with a person or corporation to accomplish this, the board could designate one of its commissioners to make such periodic inspections as may be necessary to assure the county commissioners that the work is being performed pursuant to specifications, etc. Such county commissioner would not be authorized to make any changes in the basic contract and any changes that need to be made would have to be referred to the full board for appropriate action.

While it is clear beyond doubt that all official action taken by county commissioners must be as a board, it does not prevent the board for assigning certain projects or governmental activities to individual commissioners for purposes of making a study and making recommendations to the board as a whole.

HELGI JOHANNESON
Attorney General