

OPINION
56-74

September 13, 1956 (OPINION)

COUNTY MEMORIALS

RE: Erection on Leased Premises - Legality

This is in reply to your letter of September 13, 1956, requesting an opinion of this office with reference to county memorials.

The facts as set out in your letter are as follows: Your Board of County Commissioners proposed to join with an American Legion Post in erecting a memorial on land to be leased from the United States of America to the Legion Post for a term of ninety-nine years. The land is presently held by the United States in trust for an Indian, and is located on an Indian Reservation. Presumably, the Indian Ward will apply to the Government requesting that such ninety-nine year lease be made. Your specific question is whether we see any legal objection to the erection of a memorial on real estate of this nature and location on such leased premises.

The only possible legal objection that we could see to the location of such memorial upon Indian lands leased from the Federal Government for a ninety-nine year term is that there might be some question as to the ability of the Board of County Commissioners to either "properly and permanently maintain" such memorial or to provide by contractual agreements for proper and permanent maintenance, where such memorial is erected upon leased premises.

The only possible legal objection that we could see to the location of such memorial upon Indian lands leased from the Federal Government for a ninety-nine year term is that there might be some question as to the ability of the Board of County Commissioners to either "properly and permanently maintain" such memorial or to provide by contractual agreements for proper and permanent maintenance, where such memorial is erected upon leased premises.

It would appear to us that the answer to this question must be dependent upon the type of memorial contemplated. If the memorial contemplated is of such a type as will obviously not be in existence for the full term of the ninety-nine year lease it would be our opinion that the maintenance requirements of section 11-3201 of the 1953 Supplement of the N.D.R.C. of 1943 as amended by chapter 118 of the 1955 Session Laws would be met by maintenance for the life of the building. If, however, a more permanent type of monument, such as a stone shaft or obelisk is contemplated, it would be our opinion that it would not be proper to erect it upon leased premises in so far as the statutory requirement that the monument shall be properly and permanently maintained could not be met unless of course the lessor would agree to allow either maintenance of monuments erected or removal of same subsequent to the expiration of the lease.

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Attorney General