

**LETTER OPINION
2002-L-68**

November 27, 2002

The Honorable Bill Bowman
State Senate
RR 2 Box 227
Bowman, ND 58623

Dear Senator Bowman:

Thank you for your request for my opinion on whether a candidate who successfully ran for state's attorney in two different counties may serve as state's attorney in both counties. Your letter indicates that the candidate met with the county commissioners in both counties prior to the election to discuss her intentions and that the commissioners "had no objection."

The state's attorney office in Bowman and Slope Counties is an elected position. N.D.C.C. § 11-10-02. An elected county officer may hold the same office in two different counties. N.D.C.C. § 11-10-04. Specifically, subsection 11-10-04(2), N.D.C.C., states that "a person may serve as an elected officer of more than one county" if the board of county commissioners of each affected county approves and the individual is a qualified elector of one of the counties in which the person is elected.¹

¹ 2001 N.D. Op. Att'y Gen. L-33 discussed the requirement under then North Dakota Constitution Article VII, § 8 prior to its amendments in 2002 that all candidates for county elections be a resident in the jurisdiction in which they are to serve at the time of the election. This constitutional provision was found to limit the options available for appointment to a vacant office of state's attorney and also as a qualification for that elected position. The June 2002 voter approval of amendments to North Dakota Constitution Article VII, § 8 removes the requirement of residency at the time of the election except as to the election of a sheriff. Therefore, that portion of 2001 N.D. Op. Att'y Gen. L-33 relating to the candidate's residency requirement at the time of the election is no longer relevant to the issues resolved in this inquiry regarding a state's attorney's qualifications for office.

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Accordingly, it is my opinion the individual elected in both counties may serve as state's attorney in both counties if the individual is an elector in one of the counties and the board of county commissioners in each of the counties approves, as required by N.D.C.C. § 11-10-04(2).

Sincerely,

Wayne Stenehjem
Attorney General

sam/vkk