

LETTER OPINION
96-L-162

October 1, 1996

Mr. John T. Goff
Cass County State's Attorney
PO Box 2806
Fargo, ND 58108-2806

Dear Mr. Goff:

Thank you for your September 20, 1996, letter asking whether a county officer may appoint a deputy, clerk, or assistant (assistant) under N.D.C.C. § 11-10-11 when the person is employed by, and paid from funds allocated and budgeted to, another county department.

Your letter involves the interpretation of N.D.C.C. § 11-10-11, which provides:

The salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, register of deeds, clerk of the district court, and state's attorney must be fixed by a resolution of the board of county commissioners. Each of the named officers may appoint such deputies, clerks, and assistants, in accordance with the budget, except none of the officers mentioned in this section may appoint as deputy any other officer mentioned in this section. The number and compensation of deputies, clerks, and assistants for a clerk of district court which is funded by the state pursuant to section 11-17-11 must be set by the supreme court.

(Emphasis added). You ask whether the phrase underlined above refers to the county budget in general, which would permit the appointment of an assistant currently employed in another county department, or to the individual budget of the county officer appointing the assistant. I will assume for the purpose of this opinion that the proposed assistant is not one of the officials listed in N.D.C.C. § 11-10-11 and that the proposed appointment would not be incompatible with the person's current employment in the other county department. See e.g. Tarpo v. Bowman Public Sch. Dist. No. 1, 232 N.W.2d 67 (N.D. 1975).

Mr. John T. Goff
October 1, 1996
Page 2

N.D.C.C. § 11-10-11 does not indicate to which budget it refers. Because this section could reasonably be interpreted to mean either the county budget in general or the budget of an individual county officer, the statute is ambiguous. See Southeast Cass Water Resource Dist. v. Burlington Northern R. Co., 527 N.W.2d 884, 888 (N.D. 1995) (statute ambiguous if susceptible to differing but rational meanings). Therefore, use of extrinsic aids such as legislative history is appropriate. Id.; N.D.C.C. § 1-02-39.

The above-underlined phrase in N.D.C.C. § 11-10-11 was added when the statute was amended in 1989. See 1989 N.D. Sess. Laws ch. 140. The bill sponsor's remarks to the House Committee on Political Subdivisions and the bill summary prepared by the Legislative Council both indicate that the amendment referred to the "county budget." See Hearing on S. 2507 Before House Comm. on Political Subdivisions, N.D. 51st Leg. (March 10, 1989) (Testimony of Senator Axtman). Even more informative is the sponsor's statement to the Senate Committee on Political Subdivisions that the amendments would "allow[] the county the ability to have a county office holder use a deputy of another office in the county if that person is qualified." Hearing on S. 2507 Before Senate Comm. on Political Subdivisions, N.D. 51st Leg. (February 10, 1989) (Testimony of Senator Axtman). This result would not be logically possible if "budget" were interpreted to refer to the individual budget of the county officer appointing the assistant.

While the testimony or statement of one witness before a legislative committee does not necessarily reveal legislative intent, the witness in this case was both a member of the Legislature and the sponsor of the amendments. The sponsor's testimony is strong evidence that the purpose of the 1989 amendment to N.D.C.C. § 11-10-11 was to allow the appointment of a deputy who is not necessarily in the same county department or office as the official making the appointment. In addition, this office has previously indicated that the same person may serve as deputy to both the clerk of court and the register of deeds. See Letter from Assistant Attorney General Terry Adkins to James Wold (August 1, 1989).

Therefore, it is my opinion that the phrase "in accordance with the budget" refers to the county budget and not to the budget of any individual county department. As a result, an officer listed in N.D.C.C. § 11-10-11 may appoint an assistant employed in another county department, assuming the county appropriates sufficient funds to the other department to employ the person, if the assistant is not

Mr. John T. Goff
October 1, 1996
Page 3

an official listed in the statute and the positions are not
incompatible.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jcf/vkk