

LETTER OPINION
96-L-53

April 4, 1996

Mr. Earle R. Myers
Richland County State's Attorney
413 3rd Ave N
Wahpeton, ND 58075-4427

Dear Mr. Myers:

Thank you for your March 20, 1996, letter regarding the application of N.D.C.C. § 24-05-10 to a home rule county that does not have a county treasurer or register of deeds.

N.D.C.C. § 24-05-10 provides:

If the board of county commissioners is unable to purchase the lands required for the purposes mentioned in section 24-05-09 at a price which such board deems reasonable, the board by order or resolution shall declare the necessity for the taking of such lands and shall direct a special board consisting of the county auditor, the county treasurer, and the register of deeds of such county to fix the damages for such taking.

(Emphasis added.) You ask how the board of county commissioners (Board) can comply with this section and N.D.C.C. § 24-05-11 when the Board is "operating under a home rule charter which does not specifically provide for the officers listed?"

To answer this question it is necessary to first determine whether Richland County is required to elect or appoint a county treasurer or register of deeds. N.D.C.C. § 11-10-02 requires each county to have a county treasurer and register of deeds unless the county "has adopted one of the optional forms of county government provided for by the code." As a home rule county, Richland County may "[p]rovide for county elected and appointed officers and employees, their selection, powers, duties, qualifications, and compensation, and the terms of county appointed officers and employees" if that authority is "included in the charter and implemented through ordinances." N.D.C.C. § 11-09.1-05. See also Litten v. City of Fargo, 294 N.W.2d

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628 (N.D. 1980); 1992 N.D. Op. Att'y Gen. 45, 46. Charters and ordinances implementing a home rule county's authority to provide for county officers and their duties supersede conflicting state statutes. N.D.C.C. § 11-09.1-05; 1995 N.D. Op. Att'y Gen. L-48 (planning commission members); 1992 N.D. Op. Att'y Gen. 45 (superintendent of schools).

Your letter indicates that the Richland County home rule charter requires the Board to appoint a county auditor and authorizes the Board to appoint additional county officials and employees. Through ordinances implementing this authority, the Board has appointed a county auditor but has not appointed a county treasurer or register of deeds. You indicated in a phone conversation with a member of my staff that the Board instead has assigned the statutory functions of those two offices to other county employees. This assignment supersedes the requirement in N.D.C.C. § 11-10-02 that each county have a county treasurer and register of deeds. Therefore, it is my opinion that Richland County is not required by N.D.C.C. § 11-10-02 to elect or appoint a county treasurer or register of deeds.

The question then becomes how to apply the requirements in N.D.C.C. § 24-05-10 when Richland County has properly decided not to elect or appoint a county treasurer or register of deeds. Again, state statutes continue to apply to home rule counties until "superseded by the charters of the counties or by ordinances passed pursuant to the charters." N.D.C.C. § 11-09.1-05. Here, the requirement in N.D.C.C. § 24-05-10 that the Board name the county auditor, county treasurer and register of deeds to the special board created in that section continues to apply and is not superseded until the Board adopts an ordinance otherwise identifying the county official or officials who should serve on the special board. Thus, it is my opinion that the Board can comply with N.D.C.C. §§ 24-05-10 and 24-05-11 either by appointing a county treasurer and register of deeds to serve on the special board with the county auditor or by adopting an ordinance assigning the duty to sit on the special board to other county officials or employees.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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