

**LETTER OPINION**  
**97-L-146**

September 9, 1997

Mr. Michael S. McIntee  
McHenry County State's Attorney  
PO Box 90  
Towner, ND 58788-0090

Dear Mr. McIntee:

Thank you for your letter concerning possible changes in two voting sites within your county in preparation for the June 1998 election. Both situations you posed in your letter concerned voting sites that you state are not handicap accessible and that are also otherwise unsuitable for continued use as voting sites.

The first situation you presented concerns a voting place located in a small city. You asked whether the county auditor may advise the city of a range of possible options to make the voting place handicap accessible, to locate a new voting place within the city, or to authorize a voting place outside of the city. The authority to designate and alter a voting place for precincts located within the boundaries of an incorporated city lies with the governing body of that city. N.D.C.C. § 16.1-04-02(1).

The county auditor is the county administrator of elections. N.D.C.C. § 16.1-01-01(4). In that capacity, the county auditor certainly has the implied authority to suggest ways of improving the electoral process to governing bodies of other political subdivisions within the county to improve the administration of elections and to comply with legal requirements for elections. N.D.C.C. § 16.1-04-02(2) states:

The board of county commissioners of each county:

2. Shall provide that all voting places are accessible to the elderly and the physically disabled.

N.D.C.C. § 16.1-13-27 further provides:

Parking facilities at polling places must be accessible to the elderly and the physically disabled and must be clearly marked.

Mr. Michael S. McIntee  
September 9, 1997  
Page 2

Id. However, as you acknowledge in your letter, only the city governing board has the authority to designate or alter the actual voting site.

The voting site you suggest in your letter as an alternative is not located within the boundaries of the city in question. However, in a prior opinion issued by this office, Attorney General Spaeth opined that

a polling place may be located outside of a precinct if it provides an enhancement to the elective franchise by increasing accessibility and ease of voting for purposes of implementing state and federal laws, as well as providing a central voting place for all voters. It is necessary that the polling place be designated by the proper political subdivision, that the election be conducted in a fair and regular manner, and that a regular canvas [sic] and return of the votes cast be made.

This opinion is supported by N.D.C.C. § 16.1-04-02(1) which allows the city or county, as the case may be, to alter the precinct voting places for "good and sufficient reason."

Letter from Attorney General Nicholas J. Spaeth to Secretary of State Jim Kusler (June 16, 1992) (copy enclosed).

Thus, the range of options which you suggested the county auditor could present to the city governing body appears reasonable and within the ambit of advice previously issued from this office.

The second situation you posed concerns a handicap inaccessible township voting place within a particular county commission district (District A for purposes of this letter). You indicated that if this voting place is closed, the nearest voting place within District A is 20 miles away, although there is a city voting site within two miles in a different county commission district (District B). I believe that the June 16, 1992, opinion would be applicable to this situation as well. It is possible that the polling place for the township in question could be outside of District A if it provides an enhancement to the elective franchise by increasing accessibility and ease of voting for purposes of implementing election laws as well as providing a central voting place for voters.

As provided in N.D.C.C. § 16.1-04-02, for precincts not located within the boundaries of an incorporated city, the board of county

Mr. Michael S. McIntee  
September 9, 1997  
Page 3

commissioners "may alter the voting places when there is good and sufficient reason." The county and city could enter into an agreement to allow those township voters from District A to vote at the city voting place in District B. See 1982 N.D. Op. Att'y Gen. 13 ("[w]here the county commissioners establish a voting place for persons residing within townships which are within different county commission districts, there appears to be no prohibition against the commissioners providing separate ballots for the different types of voters to ensure that the appropriate persons would be voting for the appropriate candidates and measures. Again, these are matters which are solely within the discretion of the governing body of the cities and counties.").

In your letter you suggested the possibility of remedying the second situation by use of the redistricting process whereby the affected township in District A would be redistricted into District B and another township of roughly equal population would be shifted from District B to District A. However, that does not appear to be a viable solution since redistricting within a census interim may only be done for the purpose of equalizing districts or if county commissioners are elected at large. Neither of those conditions is apparently present here. See N.D.C.C. § 11-07-02 ("[i]f any one district in the county varies more than ten percent from the average population per commissioner in such county determined by dividing the total population of the county at the last federal decennial census by the number of commissioners' districts in such county, or if county commissioners are elected at large, the redistricting board shall redistrict the county, as provided in this chapter.").

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

jjf/pg  
Enclosure