

N.D.A.G. Letter to Lies (Nov. 28, 1989)

November 28, 1989

Mr. Steven J. Lies
Wahpeton City Attorney
610 Second Avenue North
Wahpeton, ND 58075

Dear Mr. Lies:

Thank you for your November 8, 1989, letter concerning the transition from a council form of government to a modern council form of government. You ask for an interpretation of N.D.C.C. § 40-04.1-01 and the manner in which the transition occurs where incumbent office holders continue to hold office until their term of office expires.

N.D.C.C. § 40-04.1-01 describes how the governing body of a city adopting a modern council form of government is composed. Before 1987 this statute stated that when a city first adopts a modern council form of government, the candidate elected mayor and the candidates elected from the wards are elected to a four-year term. The at-large candidates are elected to a two-year term. Thereafter, all of the terms of office for the members of the council are four years. House Bill No. 1521, which changed this procedure, was introduced during the 1987 Legislative Session. As introduced, the last two sentences of that bill provided:

The city governing body may allow council members who were previously elected to continue to hold office until their term expires. In that case, council members from the odd-numbered wards and at least two at-large council members must be elected to a four-year term at the first election, with the remainder of the council members being elected to four-year terms at the next regular election.

House Bill No. 1521, 50th Leg. (1987).

H.B. No. 1521 was enacted by the Legislature with one change. The word "shall" replaced the word "may" in the next to last sentence of the bill as originally introduced. Thus, city governing bodies must allow council members to continue to hold office until their term expires. 1987 N.D. Sess. Laws ch. 488, § 2.

You suggest a conflict exists within N.D.C.C. § 40-04.1-01 as to the terms of office for at-large elected candidates under the modern council form of government. Initially in the statute, a two-year term is provided for such at-large elected candidates. At the end of the statute a four-year term is provided for at least two of the at-large council members during the first election.

Actually, there is no conflict within the statute. The next-to-last sentence of N.D.C.C. § 40-04.1-01 refers to the situation where council members continue to hold office until their term expires. It is for this reason that that last sentence begins with "[i]n that case." The "case" referred to is where previously elected council members continue to hold office until their term expires. Because this will normally be the case unless an individual decides to resign, it is the last sentence of N.D.C.C. § 40-04.1-01 which determines the various terms of office for council members following the transition to a modern council form of government.

Therefore, where a city selects the modern council form of government and where previously elected council members continue to hold their office until their term expires, the last sentence of N.D.C.C. § 40-04.1-01 determines the method whereby council members are elected to the city governing body.

I hope this discussion is helpful to you.

Sincerely,

Nicholas J. Spaeth

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