

N.D.A.G. Letter to Galloway (Dec. 31, 1987)

December 31, 1987

Mr. Gerald Galloway
Beach City Attorney
P.O. Box 370
Dickinson, ND 58601

Dear Mr. Galloway:

Thank you for your letter of December 16, 1987, concerning the transfer of municipal ordinance cases to county court and a municipal judge's salary.

As you point out in your letter, N.D.C.C. § 40-18-06.2 allows the transfer of municipal ordinances cases to county court if a governing body of a city so desires. However, N.D.C.C. § 40-18-06 specifically states that a municipal judge's salary may not be reduced during his term of office.

I understand the suggestion that these two statutes, with respect to their intent, may be in conflict with one another. One may argue that the Legislature did not intend for a municipal judge to continue to receive his or her full salary where most municipal court cases were being transferred to a different court.

However, it is important to note that the enactment of N.D.C.C. § 40-18-06.2 (allowing for the transfer of municipal ordinance cases to county court) occurred as part of Senate Bill No. 2040 (1987 N.D. Sess. Laws ch. 375, § 8). Within this very same bill, an amendment to N.D.C.C. § 40-18-06 occurred. It is the latter statute which prohibits the reduction of a municipal judge's salary during his term of office. No change was made by the 1987 Legislative Assembly to the crucial language prohibiting the reduction of a judge's salary during his term of office. 1987 N.D. Sess. Laws ch. 375, § 6.

It is arguable whether there is a conflict between the intention of these two statutes. One may argue that the Legislature intended to discuss the prohibition of the reduction of a municipal judge's salary during his term of office where a transfer of municipal ordinances cases to county court occurs. However, the Legislature had every opportunity to do so, but did not make any amendment to N.D.C.C. § 40-18-06. In construing this statute, the only conclusion I may draw is that prohibition against the reduction of a municipal judge's salary continues as the law of the state and is not to be ignored where a transfer of municipal ordinances cases, in whole or in part, occurs to a county court. The only suggestion that can be made is that any transfer of municipal ordinance cases occur after the incumbent's current term of office has concluded so that the salary matter may be addressed by the city governing body.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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