

OPINION
64-84

January 15, 1964 (OPINION)

COUNTIES

RE: Vacancy in Office - Appointment for Unexpired Term

This is in reply to your letter of January 14, 1964, relative to a vacancy in the office of state's attorney. You state the following question:

We request an opinion from your office on the question of whether an appointment by the County Commissioners to fill a vacancy in the State's Attorney's office constitutes an appointment for the unexpired term, or whether the appointee must submit to a vote of the people at the next general election."

In 1962 the electors of this state amended Section 173 of the North Dakota Constitution to provide that the state's attorney, among other county officers, should be elected for a term of four years. This amendment applied to all officers elected at the general election in 1962. The next regular election for the office of state's attorney will, therefore, be in 1966. Although this constitutional amendment is self-executing the 1963 Legislature amended section 11-10-02 of the North Dakota Century Code to correspond with Section 173 of the North Dakota Constitution, as amended.

Vacancies in county offices are to be filled in accordance with section 44-02-04 of the North Dakota Century Code, as amended. This section provides:

VACANCY IN COUNTY OFFICE - APPOINTMENT. A vacancy in any county office, other than that of county commissioner, shall be filled by the board of county commissioners, with the exception that if a vacancy has occurred in the office of state's attorney by reason of his removal under section 44-11-01, the appointment shall be made by the board of county commissioners by and with the advice and consent of the governor. The board of county commissioners may declare a county office to be vacant whenever the officeholder is unable to perform the duties of the office for six months or more. However, if within one year the officeholder should become able to perform his duties the county commissioners may, for good cause shown, reinstate such officeholder."

The state's attorney is, of course, a county officer. See section 11-10-02 of the North Dakota Century Code, as amended.

Section 44-02-08 of the North Dakota Century Code provides:

APPOINTMENT TO BE MADE IN WRITING - TERM. Any appointment to fill a vacancy under the provisions of this chapter shall be

made in writing, and except as otherwise expressly provided by law shall continue in force until the expiration of the term in which the vacancy occurs, and until the appointee's successor is elected and qualified."

The vacancy in the office of state's attorney is filled under the provisions of chapter 44-02 of the North Dakota Century Code, as amended. We can find no other provisions expressly providing for term of the person appointed to fill such vacancy. The term in which such vacancy is filled is a four-year term and does not expire until 1966.

It is, therefore, our opinion that an appointment by the county commissioners to fill a vacancy in the office of state's attorney constitutes an appointment for the unexpired term and the appointee need not submit to a vote of the people at the next general election.

HELGI JOHANNESON

Attorney General