

**OPINION  
66-45**

July 25, 1966 (OPINION)

Mr. Calvin N. Rolfson

Assistant State's Attorney

Pembina County

RE: Counties - County Justice - Qualifications

This is in response to your letter in which you request an opinion as pertaining to the office of county justice under the following facts:

May one who is not a licensed attorney of the State of North Dakota circulate petitions and file for the office of county justice, pursuant to Chapter 27-18 of the North Dakota Century Code?

May one who has been duly appointed to the office of county justice, but who is not a licensed attorney of the State of North Dakota, be required to give up his office of county justice of favor of a qualified attorney of the state who wished the job? Would an employment contract between such appointed county justice and the county have any effect upon the tenure of such employment?"

The qualifications and term of office of the county justice are contained in section 27-18-02 of the North Dakota Century Code, which provides as follows:

QUALIFICATIONS AND TENURE OF COUNTY JUSTICE. The county justice shall be licensed to practice law in this state but need not be an elector of the county for which he is elected or appointed, and shall hold office for a term of two years commencing at the same date as the date as the term of the county judge. The county justice so elected or appointed may serve more than one county."

In the event a qualified person is not available or will not accept the position of county justice, a procedure is provided for in section 27-18-06 of the 1965 Supplement to the North Dakota Century Code under which at least three (3) names are submitted to the district judge by the county commissioners for appointment to the office by the district judge. This section provides as follows:

APPOINTMENT OF COUNTY JUSTICE UNDER CERTAIN CIRCUMSTANCES. If the board of county commissioners in any county shall determine that no person possessing the qualifications required of a county justice by section 27-18-02 will accept such position or is available within said county and that the election or appointment of a person possessing such qualifications from another county is not feasible because of distance, inaccessibility, or other factors, the board of county commissioners may submit the names of not less than three

qualified electors of the county, who need not possess the qualifications required by section 27-18-02, whom said commissioners deem qualified to perform the duties of a county justice, to the senior judge of the district court in and for such county. The district judge may appoint not more than two of the persons from the list submitted to him to serve as county justice. In the event the district judge shall determine that two or more of the persons whose names are submitted are not suitable or qualified for appointment, the county commissioners upon request of the district judge shall submit additional lists of names."

The term, "will accept such position or is available within said county", actually means that a person must be ready, willing and able to serve in the capacity of county justice. Only if a finding is made by the county commissioners that such person is not available may a person be appointed to the position of county justice who does not possess the qualifications under section 27-18-02. It is further noted that section 27-18-06 pertains only to appointment under certain conditions.

Thus, in direct response to your first set of facts and questions, it is our opinion that a person who is not licensed to practice law in this state is not eligible to run for the office of county justice.

As to the second set of facts and questions, we wish to note that the office of county justice carries a specified term. The provisions of section 27-18-06 do not imply that an appointment is made until a qualified person is available but simply that an appointment is made.

If a "lay" or unqualified person who accepts an appointment to the office of county justice would be subject to removal and replacement in the event a qualified person becomes available, it would leave the office in state of uncertainty and confusion comparable to the game of "musical chairs." Such result would not lend itself favorable to the administration of the office nor would it be conducive to the objective for which the office was created.

It is therefore our opinion that once the person is appointed under the provisions of section 27-18-06 that such person serves for a period of two years or for the remainder of the two-year term, whichever is the lesser.

HELGI JOHANNESON

Attorney General