

OPINION  
68-35

January 31, 1968 (OPINION)

Mr. Lindy L. Lein

Mayor

Wing, North Dakota

RE: Cities - Transition of Villages to Cities - Election of Officers

This is in reply to your letter in which you ask for an opinion on the following:

The city of Wing would like an opinion on whether or not the officers elected under the village form of government, under which Wing operated previous to the passage of Senate Bill No. 46, which became effective July 1, 1967, and whose terms do not expire this year will be required to run for reelection in the April 1968 city election, or will they continue in office until the expiration of the term to which they were originally elected, or does the transition of villages to cities, under paragraph 283 and 284, Chapter 323, North Dakota Session Laws of 1967, require the election of an entire new board. In an entire new board must be elected what criteria will determine the length of the terms."

Chapter 323, Senate Bill No. 46, as enacted by the 1967 Legislature abolished the village form of government and provided that such village government would be governed by laws pertaining to cities governed by a council. This Act became effective on July 1, 1967. The Legislature realized that each village would have to hold an election on or about July first to elect its governing body if it did not provide for some transition from the village form of government to the council form of government. Presumably Section 283 was designed to provide the transition from village to city. This section provides as follows:

TRANSITION OF VILLAGES TO CITIES. Upon the effective date of this Act, the village officers then in office shall assume the duties of and exercise the powers conferred upon like officers of a city operating under the council system of municipal government, until their successors are elected and qualified pursuant to chapter 40-08, or appointed pursuant to section 40-14-04.

1. The president of the board of trustees shall become the mayor;
2. The village trustees shall become the aldermen;
3. The village clerk shall become the city auditor and the village assessor shall become the city assessor, unless and until the mayor, with the approval of the city council, appoints another;

4. The village attorney and engineer shall become the city attorney and engineer, unless and until the mayor, with the approval of the city council, appoints another; and
5. The municipal judge shall continue to act in that capacity."

Section 284 also pertains to the same subject matter. The underscored language in Section 283 quoted above supports the conclusion that the transition provision is applicable only until the next regular election as provided for in Chapter 40-08. By referring to Section 40-08-06 we find provisions which relate specifically to instances when a city first adopts the council form of government or where a city had a commission form of government and adopts the council form of government. It also provides for staggering terms for the councilmen. Section 40-08-06 of the North Dakota Century Code provides as follows:

TERM OF OFFICE OF ALDERMEN - STAGGERED TERMS PROVIDED FOR.  
Aldermen shall hold office for four years and until their successors are elected and qualified. Terms of aldermen shall be arranged so that only one-half of the aldermen in any city shall be elected in any one election. When a city first adopts the council form of government, or when a city has adopted the commission system of government returns to the city council form of government as provided by section 40-04-08, the alteration of the terms of the aldermen thereof as provided for in this section shall be perfected as follows: of the aldermen elected in each ward, the one receiving the greater number of votes shall serve until the third Tuesday in April following the second succeeding biennial election and the one receiving the lesser number of votes shall serve until the third Tuesday in April following the biennial election succeeding his election; if the city is not divided into wards, the one-half of the aldermen elected in the entire city receiving the greater number of votes shall serve until the third Tuesday in April following the second succeeding biennial election and the one-half of the aldermen elected in the entire city receiving the lesser number of votes shall serve until the second Tuesday in April following the biennial election succeeding their election. Whenever, for any cause, more than one-half of the total number of aldermen in any ward, or more than one-half of the total number of aldermen in the city, if the city is not divided into wards, are to be elected in any one election, the length of the terms of the aldermen elected at such election shall be determined as provided in this section." (Emphasis supplied.)

This section spells out in somewhat detail the procedures to be employed when a city first elects its officers under the council form of government. This provision would have application to the present situation.

The provision of Section 283, as to the temporary functions of the existing officers of the village, applies only during the interim beginning July 1, 1967, and ending the third Tuesday in April, 1968.

It should also be observed that village officers were elected every year with terms of either two or three years, whereas the council form of government elects its officers only in the even numbered years for a period of four years. It thus appears that the village officers elected in the year 1967 would have a term of office that would extend into 1969. Because cities having council form of government do not have an election in the year 1969, the persons elected to office in 1968 would create the problem of calling either a special election to fill in the gap until the next election, or their term would be extended until the next year. In addition to this, the council form of government has the office of mayor. By simply designating that the president of the board of trustees shall become the mayor would actually leave the selection of mayor to the trustees, which would result in a mayor being designated by default and not by the electorate. Section 283 obviously intended that the president of the board of trustees should be the mayor but only for the interim period beginning July 1, 1967, and ending when the newly elected officers take office until Chapter 49-08, which is the third Tuesday in April. The election is on the first Tuesday of April. (Section 40-21-03.)

An argument can be developed that the provisions of Section 283 of Chapter 323 constitute the complete transition, but if this concept is followed the terms of the trustees would either have to be extended for a period of one year or reduced by a period of one year. Such argument might be valid if we were confronted with the question whether or not a person's term could be terminated, but this is not the situation here. The form of village government has actually been abolished in this state, consequently any person holding any office thereunder has no right to the office which no longer exists. So in this respect the term officially came to an end on July 1, 1967, except for the continued life for the transition period referred to in Section 283 of Chapter 323.

It is also significant to note that under the provisions of Section 284 of Chapter 323 that where the number of trustees exceed the number authorized under Chapter 40-08, the reduction should not take place until the next regular election which, of course, is pursuant to Chapter 40-08, on the third Tuesday in April of even numbered years. If the village government were to continue, the question would arise as to which trustee would be eliminated. No provision is found in the law as to the procedures to be followed in eliminating a trustee or councilman under this situation.

It is therefore our opinion that the officers of a village, pursuant to the provisions of Section 283 of Chapter 323, may hold office only until the results of the election held on the first Tuesday in April are known and such newly elected officers take office on the third Tuesday in April. It is our further opinion that each village which is now a city under Chapter 323 will be required to elect a slate of officers in the same manner as a city which first adopts the council form of government and as provided for in Section 40-08-06. The election held thereunder would apply to every elective office. This, in effect, means that on the first Tuesday in April of 1968, every village which became a city with the council form of government under Chapter 323 will be required to hold an election, at which time all of the elective offices will be open for election. The election will

have to be conducted pursuant to the provisions of Chapter 40-08.

Correspondingly, a letter dated June 7, 1967, addressed to Mr. Maurice Ellingrud, Member of the Village Board, Buxton, North Dakota, is modified accordingly.

HELGI JOHANNESON

Attorney General