

OPINION
69-128

November 12, 1969 (OPINION)

Mr. Richard B. Thomas

State's Attorney

Ward County

Minot, North Dakota

RE: Counties - Redistricting - Establishment of Districts

This is in reply to your letter of November 5, 1969, relative to the redistricting of counties as provided by Chapter 11-07 of the North Dakota Century Code, as amended by the 1969 Legislative Assembly. The question presented is whether a proposal of electing three commissioners at large from the City of Minot and dividing the rest of the county in two districts would meet the requirements of the statutes.

We note the provisions of Section 11-07-03 of the North Dakota Century Code, as amended, which provides in part:

"* * * In the event that redistricting is required but not completed in the manner prescribed in this chapter, all commissioners' districts in such county shall be abolished and, notwithstanding the provisions of section 11-11-02, thereafter county commissioners for such county shall be elected at large without regard to district representation in the manner and at the time provided in this title and shall continue to be elected at large until a proper redistricting plan is filed as required by this chapter."

The first part of this provision requires that in redistricting the board shall make the districts as regular and compact in form as practicable, and as substantially equal in population as possible. It further provides that in no event shall every district be formed in such a manner that the population of cities located within each district exceeds the population of the district area outside the cities. No commissioner's district may vary in population more than ten percent from the average population per commissioner. It appears to us that all of these provisions contemplate a redistricting of the entire county. Furthermore, we note there would be a problem in determining the length of the commissioner terms following the first election after redistricting as provided in Section 11-07-04. These provisions obviously contemplate a redistricting of the entire county or the election of all commissioners at large.

We are also aware that since the redistricting board is created by the Legislature, it has only such powers as are expressly granted to it by the Legislature or must necessarily be implied therefrom. We find no authority, express or implied, for the redistricting board to redistrict a portion of the county and permit the election of the rest of the commissioners at large from the rest of the county.

It is, therefore, our opinion that the present provisions of Chapter 11-07 of the North Dakota Century Code, as amended, do not contemplate a redistricting program whereby three commissioners would be elected at large from the City of Minot and the rest of the county would be divided into two commissioner districts. If such a proposal is adopted by the redistricting committee, we believe it would implement the provisions of Section 11-07-03 of the North Dakota Century Code, as amended, providing that when redistricting is required but not completed in the manner prescribed in Chapter 11-07, all commissioners' districts are abolished and all county commissioners are to be elected at large.

HELGI JOHANNESON

Attorney General