

OPINION
69-259

May 20, 1969 (OPINION)

Mr. Don Hastings, Chairman

Stutsman County Commissioners

RE: Officers - State's Attorney - Resignation

This is in reply to your letter of May 15, 1969, which has been referred to my desk for reply.

You state in your letter that the county commissioners for Stutsman County have received a letter of resignation from your State's Attorney. You then ask whether you, as a Board, are required to accept such a resignation or if you can insist that he finish his term which expires December 31, 1970.

With regard to the letter of resignation, it would appear that the same is governed by Section 44-02-02 of the North Dakota Century Code, which provides in part:

"RESIGNATIONS OF OFFICERS - TO WHOM MADE. The resignation of an officer must be in writing and must be made as follows:

1. * * * through 4. * * *
5. An elective county officer, by filing or depositing such resignation in the office of the county auditor, except that the resignation of the county auditor shall be filed or deposited with the board of county commissioners. Any such resignation, unless a different time is fixed therein, shall take effect upon such filing or deposit;
6. * * *
7. * * *."

Your question of whether such resignation must be accepted by the Board of County Commissioners is not specifically governed by statute. It is, however, almost universally accepted in the United States that an officer may resign his elective position since the same is not founded in a contract or contract rights. The rule has been stated in State ex rel. Williams v. Beck, 24 Nev. 92, 49 Pac. 1035, as follows:

"A civil officer has the right to resign his office at his own pleasure and will, and the acceptance or rejection of such resignation can, in no manner, affect such right."

(For a complete discussion of the right of such officer to resign, see 19 A.L.R. 39.)

In view of the above statute and rule of law regarding the right of a civil officer to resign, it is our opinion that the State's Attorney

does have the right to resign from his office, at his will, effective either at the date of such resignation or at the date specified in the resignation.

HELGI JOHANNESON

Attorney General