

**OPINION
70-97**

March 23, 1970(OPINION)

The Honorable Ben Meier
Secretary of State

RE: Counties - County Coroner - Elective Office in Certain Counties

This is in reply to your letter of March 19, 1970, relative to the office of county coroner. You state the following facts and questions:

According to Section 16-01-11 N.D.C.C. the Secretary of State between June 1 and July 1 in each primary election year is to give notice to the County Auditors specifying the several officers to be nominated in each county at the next primary election.

Referring you to Section 11-10-02 and Section 11-19A-03 N.D.C.C. I request your opinion whether or not the County Coroner in counties of less than 8,000 population should be certified by me to the County Auditor as an officer to be nominated."

Chapter 11-19A is the "Medical County Coroner Act." It was enacted in 1955. It provides among other things for the appointment of a physician as coroner in counties having a population of eight thousand or more according to the last preceding official federal census. Thus section 11-19A-17 of the North Dakota Century Code provides:

APPLICATION. The provisions of this chapter shall apply to every county in this state having a population of eight thousand or more according to the last preceding official federal census, and the provisions of chapter 11-19 and section 11-10-02 shall not be applicable to such counties. The provisions of this chapter shall not apply to counties having a population of less than eight thousand according to the last preceding official federal census and such counties shall be governed by the provisions of chapter 11-19 and section 11-10-02."

There is no question but that coroners in counties having a population of more than eight thousand must be appointed. See Section 11-19A-03 of the North Dakota Century Code.

Chapter 11-19 does not specify the method of choosing a county coroner in counties of less than 8,000 population.

Prior to the enactment of the medical county coroner act in 1955, all county coroners were governed by chapter 11-19 of the North Dakota Century Code and all county coroners were elected as provided in section 11-10-02(8) of the North Dakota Century Code, as amended. However, subsequent to the enactment of chapter 11-19A by the 1955 Legislative Assembly, the 1959 Legislative Assembly amended section 11-10-02 of the North Dakota Century Code, providing for county officers, to provide in part as follows:

Each organized county, unless it has adopted one of the optional forms of county government, provided by the code, shall have the following officers:

* * *

8. One coroner;

"* * * The required officers shall be chosen by the qualified electors of the respective counties at the general election in each even numbered year, except * * * the county coroner, who shall be chosen in the manner prescribed in section 11-19A-03, * * *."

The original medical county coroner act did not affect the election of county coroners in counties with a population of less than 8,000 persons, although the bill as originally introduced would have applied to all counties. It was amended during the course of enactment to apply to counties having a population of 8,000 or over. There was no question at that time that the county coroner would still be elected in counties having a population of less than 8,000. However, the 1959 amendment to section 11-10-02, as found in section 8 of chapter 268 of the 1959 Session Laws casts some doubt on the matter. The bill, effective July 1, 1959, was introduced for the purpose of abolishing the office of justice of the peace and establishing a county justice. As originally introduced the bill did not amend the language relative to county coroners. However, during the enactment of the bill in the Legislature, the provision of section 11-10-02, quoted above, relative to the county coroner being chosen in the manner prescribed in section 11-19A-03 was inserted. The intent of such provision is not entirely clear. It appears it may have been inserted in section 11-10-02, a general provision specifying the county officers to be elected, to indicate that in counties having a population of more than 8,000 the county coroner was to be appointed rather than elected since the section was already being amended to provide for election of a county justice. Section 11-10-02 provides that the county officers are to be chosen by the qualified electors of the respective counties at the general election in each even numbered year except the county coroner who shall be chosen in the manner prescribed in section 11-19A-03. We construe this to be a limitation upon the general statement that the county officers, including a county coroner, are to be elected. The section then provides an exception for the county coroner chosen in accordance with section 11-19A-03. Since chapter 11-19A is, by the provisions of section 11-19A-17, not applicable to counties with less than 8,000 population, it is obvious the exception does not apply to those counties. Therefore we are left with the provision that the county coroner, in counties having a population of less than 8,000 is to be elected since he is one of the officers listed in section 11-10-02 and since the exception relative to section 11-19A-03 does not apply thereto. It would not appear it was the intent of the 1959 amendment to section 11-10-02 to alter the method of selection of county coroners since the bill in which the amendment appears was a bill to abolish the office of justice of the peace and establish the office of county justice and was not concerned with the office of county coroner. The reference thereto appears to be an attempt to clarify an already existing situation.

In reaching this decision we are aware that the office of county coroner in counties of less than 8,000 has been certified as an elective office and not as an appointive office since the amendment to section 11-10-02. It is a rule of statutory construction that an administrative interpretation placed upon a statute by the department that is charged with the administration of such statute must be given considerable weight in construing same.

In summary, it is our opinion that the county coroner, in counties of less than 8,000 population, should be certified by you to the county auditor as an officer to be elected.

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