

**OPINION
70-99**

September 10, 1970(OPINION)

Mr. Leo J. Beauclair
State's Attorney
Barnes County

RE: Counties - Court of Increased Jurisdiction - Election of County

This is in response to your letter in which you state that the question of whether or not the county court should be given increased jurisdiction was favorably voted upon by the electorate in the election held on September 1.

You then make the following observations:

"Since Section 27-08-04 provides that the change in the jurisdiction of the court becomes effective upon 'the expiration of the term of the person who is judge of such court at the time of such election,' is there any purpose in having the positions of county judge and county justice on the November ballot in view of the fact that the term of the present county judge ends December thirty-first of 1970?

Assuming that the office of the county judge remains on the November ballot, would the individual elected to that position automatically become the judge of the county court of increased jurisdiction? Section 44-02-04 provides for the appointment of an individual to a vacancy in a county by the county commissioners under certain circumstances. Would this provision of the law have any bearing on the situation that now exists in Barnes County?"

You ask for our opinion and comments on the foregoing.

Basically, the office remains the same. It is still the county court except it has increased jurisdiction. With the increase in jurisdiction, pursuant to Section 111 of the North Dakota Constitution the qualifications for the office have been modified. This section among other things provides that "the qualifications of the judge of the county court where the jurisdiction of said court shall have been increased shall be the same as those of the district judge except that he shall be a resident of the county at the time of his election and said county judge shall receive such salary for his services as may be provided by law.* * *"

You do not inform us as to the qualifications of the person now holding the office or the qualifications of the person's name which we presume is on the ballot for the general election.

We are not aware of any law which authorizes the removal of names or the addition of names on the general election ballot except as provided for in Title 16, or more specifically, Section 16-08-07. However, before this section may be relied upon, a vacancy must exist. From the facts submitted in your letter we would necessarily have to conclude that a vacancy does not exist at this time.

Section 27-08-04 states that the change resulting from the election does not become effective until the expiration of the term of the person who is judge of the county court at the time of such election. This, in effect, means that the change will not be accomplished until January, 1971, when the new terms of offices begin to run.

If the current judge of the county court possesses the qualifications set forth in Section 111 of the North Dakota Constitution and such person is elected to the office, he would be the county judge of the county court with increased jurisdiction.

However, if the person does not possess the qualifications then pursuant to Section 44-02-01 subsection 9, a vacancy would exist because of the lack of qualifications. Under the provisions of Section 44-02-04 the county commissioners are authorized to make an appointment to fill the vacancy so created. However, we wish to emphasize that a vacancy occurs only if such person does not possess the qualifications.

We find no authority which would authorize the elimination of the office of county judge from the general election ballot.

It is therefore our opinion that the office of county judge is to remain on the ballot and that the persons nominated at the primary election are entitled to have their names on the general election ballot for the office of county judge. It is our further opinion that if the person elected in the general election for the office of county judge does not have the qualifications for the office of county judge with increased jurisdiction, that a vacancy exists which may be filled by the county commissioners pursuant to the provisions of Section 44-02-04.

We further observe that no authority exists for the removal of the office of county justice from the ballot even though the person elected would not serve in such capacity. However, until the county court with increased jurisdiction function, the office of county justice would still exist.

HELGI JOHANNESON
Attorney General