

**OPINION
72-119**

March 1, 1972 (OPINION)

Mr. Vincent A. LaQua
State's Attorney
Wells County

RE: Counties - Redistricting - Completion

This is in reply to your letter of December 21, 1971, with regard to redistricting problems in your county.

You inform us that your county formed a County Redistricting Board pursuant to Section 11-07-01 of the 1971 Supplement to the North Dakota Century Code.

You inform us that each township took its own census, as did each city, as of April 1, 1970. You indicate that based on said census, two proposed plans were presented at Public Hearing after due notice was published as provided in Section 11-07-02 of the 1971 Supplement to the North Dakota Century Code.

You inform us further that the board met and reviewed the two proposed plans and a resolution was introduced and approved by a majority of the Redistricting Board to accept one plan. You indicate that the two plans were within the ten percent average population per commissioners as provided in Section 11-07-02. You state that the Chairman filed in the County Auditor's Office on December 13, 1971, "accurated description of the approved geographical boundaries and a statement of any variances" "and a statement of any variances from the average population" pursuant to Section 11-07-03 of the 1971 Supplement to the North Dakota Century Code.

You indicate that thereafter, the Board of County Commissioners held a special meeting on December 20, 1971, and a resolution was introduced and passed in substantially the following form:

That County Redistricting Board reconsider and redistrict the County with the same county district lines as existed prior to redistricting and that one commissioner shall be elected from each district and that all qualified electors of the entire county vote for all of the commissioners as provided for under Section 11-07-03.1 of the North Dakota Century Code but that only one commissioner be elected from each district."

You enclose a map of your county showing districts that existed prior to current redistricting board action, indicating also the population of each district. You enclose also a proposed plan that was not accepted, showing the boundaries and population as listed in each district and also the accepted plan showing districts and population.

Your questions are stated as:

1. Was redistricting complete for '(named)' county when the Redistricting Board by majority vote established the

geographical boundaries of the new district and the Chairman filed a map of the new districts showing the geographical boundaries, statement of the population of the new districts including an explanation of any variances with the County Auditor pursuant to Section 11-07-02 and 11-07-03?"

2. If redistricting was complete, can the board of county commissioners shortly thereafter direct the redistricting board to redistrict under the provisions of this Chapter 11-07 N.D.C.C.?"
3. If the Board of County Commissioners can order the redistricting board to redistrict under Section 11-07-03.1, does the redistricting have to comply with the Board of County Commissioners resolution ordering the redistricting board to form districts that were originally districts, that vary in population considerably more than ten percent?"

You indicate that Section 11-07-03 of the North Dakota Century Code provides that when the actions indicated by the redistricting board have been complied with, redistricting is complete, and that a reply as soon as possible would be greatly appreciated due to the December 31, 1971, deadline.

The basic purposes, of course, of the present Chapter 11-07 of the 1971 Supplement to the North Dakota Century Code was to meet the problem brought to public attention by federal court decisions setting forth the one-man one-vote principle and determining subdivision organization on other basis to be invalid. The 10 percent variation set forth in the statute is, of course, a legislative standard that is not based on current judicial precedent and has not as yet been upheld by the federal courts. We would assume, however, that compliance with the terms of the statute, including the 10 percent variance, would satisfy the mandate contained therein, to redistrict.

We note that the basic standard contained in the statute (see Section 11-07-02 of the 1971 Supplement to the North Dakota Century Code) is in effect populations determined from the last federal decennial census. In a prior opinion this office has recognized that other evidence supplementary to, though not contradictory to, such last federal decennial census can be considered by the redistricting board in arriving at their determinations.

The original enactment of Section 11-07-03 for the basic purpose heretofore mentioned as shown in Chapter 128 of the 1969 Sessions Laws provided in part:

* * *Redistricting shall be completed by the filing of an accurate description of the approved geographical boundaries and a statement by the population of the new districts with county auditor by the chairman of the board.* * *

The language was changed by Chapter 117 of the 1971 Session Laws to read, as currently shown in the 1971 Supplement to the North Dakota

Century Code in Section 11-07-03 as follows:

* * *Redistricting shall be completed by the filing, by the chairman of the redistricting board, of an accurate description of the approved geographical boundaries and a statement of the population of the new districts, including an explanation of any variances, with the county auditor.* * *

The 1971 Legislature also added to the provisions of Section 11-07-03 the provision that:

* * *Notwithstanding the provisions of this section, the redistricting board shall redistrict in the manner provided in Section 11-07-03.1, if so directed by the board of county commissioners acting pursuant to the section."

The first sentence of Section 11-07-03.1 of the 1971 Supplement to the North Dakota Century Code provides:

The board of county commissioners of any county which must redistrict under the provisions of this chapter may direct the county redistricting board to redistrict under the plan authorized by this section.* * *

While there may be some problem as to the criteria used in your county in arriving at the "population" figure used, we would assume that the plan adopted by the redistricting board and submitted to the county auditor would be prima facie valid, and would be the existent districting of the county until invalidity if any of same was determined by a court of competent jurisdiction.

It is our opinion that the phrase "of any county which must redistrict" contained in the first sentence of Section 11-07-03.1 is a generic description intended to include any county which has any one district in the county which varies more than ten percent from the average population per commissioner in such county determined by dividing the total population of the county at the last federal decennial census by the number of commissioners' districts in such county as specified in Section 11-07-02 of the 1971 Supplement to the North Dakota Century Code. We do not believe it necessary to resolve whether an exception can be read therein for counties where a redistricting board, of an accurate description of the approved geographical boundaries and a statement of the population of the new districts, including an explanation of any variances, with the county auditor," as approved by Section 11-07-03.

On such basis it is our opinion that your first question must be answered in the affirmative, to the extent, the action is complete.

On such basis it is further our opinion that your second question must be answered in the negative.

In response to your third question, same is irrelevant in view of answer to second question, however, the redistricting board in redistricting pursuant to Section 11-07-03.1 of the 1971 Supplement to the North Dakota Century Code, must redistrict in accordance with the provision of said Section 11-07-03.1 that the districts created

shall be of as nearly equal populations as is practicable, but such districts when created wholly within the boundaries of a city, may coincide with the geographical boundaries of elections wards, rather than the measure set out in the county commissioners resolution heretofore quoted.

We hope the within and foregoing will be sufficient to solve the problem in your county. We are also enclosing herewith Xerox copy of a recent opinion of this office, considering the possibility of redistricting board action after December 31, 1971, and a prior letter of this office with regard to a somewhat similar problem in another county.

HELGI JOHANNESON

Attorney General