

**OPINION  
72-217**

July 19, 1972           (OPINION)

Mr. M. C. Hiaasen  
State's Attorney  
Benson County  
Minnewaukan, ND 58351

Dear Mr. Hiaasen:

This is in response to your letter in which you state that the Redistricting Board of Benson County as redistricted but only changed two Commissioner's Districts in any manner or form. The change accomplished by the Redistricting Board resulted in adding Lallie Township which was formerly in District No. 3 to District No. 2. The change according to your letter resulted in adding 66 new voters to District No. 2 which results in a similar loss to District No. 3.

You state the figure of 66 for Lallie Township represents qualified voters. You further advise that currently the commissioner districts are set up with an expiration term as follows:

District No. 1 - term expires 1974

District No. 2 - term expires 1974

District No. 3 - term expires 1972

District No. 4 - term expires 1972

District No. 5 - term expires 1974

If the Redistricting Board took into account only voters as distinguished from residents we must express reservations as to the validity of the plan. In the absence of more specific information we will not make any further comment except to note that Chapter 11-07 requires redistricting on a population basis rather than on a voter basis.

Initially we thought of the possibility of following the rationale of the federal court in the redistricting and reapportionment law suit pending in its order dated June 29, 1972. However, upon further analysis and examination we became aware that the order of the court, which permitted some holdover senators to remain in office without standing for election, even though some changes were involved in the boundaries of the legislative districts, was in interim redistricting and reapportionment plan as distinguished from a permanent plan which is the case in your instance.

We cannot overlook the dictates of Section 11-07-04, the pertinent language which we must recognize is as follows:

"When redistricting is completed . . . all commissioners then holding office shall continue in such office until the next general election. At the first general election following

redistricting of the county . . . all county commissioner  
offices shall be open for election. The newly elected  
commissioners shall be divided into two classes . . . "

Those in even numbers shall be one class and those in odd numbers  
shall be another class. The determination as to which class will be  
for two-year term and which will be for a four-year term is by lot  
and shall be performed by the county judge in the presence of all the  
newly elected commissioners.

Your county has been redistricted which makes section 11-07-04  
applicable.

We cannot ignore the clear dictates of Section 11-07-04. It is  
therefore our opinion that all county commissioner district offices  
are up for election pursuant to the provisions of Section 11-07-04.

Sincerely yours,

HELGI JOHANNESON

Attorney General