

**OPINION
75-204**

September 26, 1975 (OPINION)

Mr. Mervin Nordeng
State's Attorney
Cass County
P.O. Box 2806
Fargo, ND 58102

Dear Mr. Nordeng:

This is in response to your letter of September 3, 1975, wherein you request an opinion relative to Section 16-09-01 of the North Dakota Century Code, as amended, concerning the combining of townships into voting precincts. You submit the following facts and questions in your letter:

"The Cass County Commission is contemplating combining the various civil townships and cities within the County of Cass into new voting precincts pursuant to the statutory authorization found in Section 16-09-01 of the North Dakota Century Code. At the same time they are contemplating going to countywide voting machines as authorized under Chapter 16-21 of the North Dakota Century Code. In reviewing the proposed plan, I have come up with several questions which are as follows:

1. Can the County Commission combine a city with more than one township?
2. Can the new voting precinct consisting of an incorporated city and one or more townships use voting machines?
3. Can a new voting precinct consisting of an unincorporated town and one or more townships use voting machines?
4. If the answer to questions 2 or 3 is yes, must the governing board of the townships in addition to the governing body of the city enact a resolution stating that the use of voting machines is advisable and necessary in the new precinct before voting machines can be placed there by the Board of County Commissioners?"

Section 16-09-01 states that the county commissioners may redivide the county into precincts, annex an existing precinct to another or combine two or more precincts under the conditions recited in subsections 1, 2, and 3. The criteria set forth in Section 16-09-01, specifically in subsections 1, 2, and 3, and in the following unnumbered sections are the conditions under which townships may be combined for voting precinct purposes. Noting that there is specific provision for the combining of a city and a township into a single voting precinct and that the authority exists for the combining "two or more existing precincts one to another," we can only conclude that a city may be combined with more than one civil township in accordance with the criteria set forth in the statute. We assume that your question finds its basis in the portion of the statute that

"If a city is partially encompassed by more than one civil township, the county commissioners shall select the civil township which will be combined with the city by taking into account accessibility of roads, trade area and compactness." We do not believe that this provision is prohibitive of the situation whereby more than one civil township is to be or is contemplated to be combined with a city but rather that such criteria applies only when a situation exists whereby a city is to be combined to one civil township and the same is so situated that such city could be combined with either of two civil townships. This would not appear to apply when both adjoining civil townships are to be combined with a city.

Accordingly, we are of the opinion that the county commission can combine a city with more than one civil township in accordance with the criteria and conditions set forth in the statute.

With regard to your second question concerning whether voting machines may be used in voting precincts consisting of an incorporated city and one or more townships, we would note the provisions of Section 16-21-01 of the North Dakota Century Code, which provides as follows:

"16-21-01. VOTING MACHINES AUTHORIZED IN CITY PRECINCTS. The use of voting machines, in accordance with the provisions of this chapter, is hereby authorized in any city election precinct upon finding and declaration by resolution of the governing body of the city and also of the board of county commissioners of the county in which such city is located that such use is advisable or necessary in such precinct and procurement of such machines, on a temporary or permanent basis, under such terms and conditions, including assumption and division of cost of acquisition and maintenance by the city and county, as may be agreed upon by the respective boards, and such machines may thereupon be used in any state, county, city, or district election in such precinct or other voting area of which such precinct is a part. (Emphasis supplied)

It is to be noted that the statute provides for voting machines in "any city election precinct" in accordance with requirements and criteria therein specified and that such is authorized "in such precinct or other voting area of which such precinct is a part." It appears clear, therefore, and we are of the opinion that voting machines may be used and are authorized in a voting precinct which includes an incorporated city and such other voting area of which such precinct is a part, including civil townships which may have been combined therewith pursuant to the provisions of Chapter 16-09 of the North Dakota Century Code.

With regard to your third question which relates to unincorporated cities instead of incorporated cities as specified by your second question, we would note that the statute provides for cities and city precincts and does not specify unincorporated cities. Since the statute further requires a finding and declaration by resolution of the governing body of the city and that statute does not include unincorporated cities within its authorization, we are of the opinion that a voting precinct consisting of an unincorporated city and one or more townships is not authorized to use voting machines.

With regard to your fourth question concerning the resolution finding and declaring that such use is advisable or necessary and whether the same must be made both in the city and in the township, we would note that Section 16-21-01, the statute providing for authorization for use of voting machines, requires a finding and declaration by resolution by the governing of the city and the board of county commissioners of the county in which such city is located. There is no requirement that the township governing body make any such finding or declaration. Accordingly, we are of the opinion that the governing board of the township need not make any determination or resolution concerning the question of use of voting machines but rather that the governing body of a city within such precinct and the county commissioners alone need make such finding and declaration by resolution.

We trust that the foregoing observations and expressions will adequately set forth our opinion upon the matters submitted and will answer your questions concerning the same.

Sincerely,

ALLEN I. OLSON

Attorney General