

**OPINION  
78-30**

September 7, 1978 (OPINION)

Mr. Gordon J. Taylor  
Grand Forks County Sheriff  
Grand Forks, ND 58201

Dear Sheriff Taylor:

This is in response to your letter of August 3, 1978 in which you asked whether or not the county commissioners have the authority to "dismiss or terminate Matron's position" in Grand Forks County.

You do not indicate in your letter whether you have discussed this matter with the state's attorney in Grand Forks County, who is designated as the legal advisor to county officials insofar as the duty of their offices is concerned. We strongly suggest that you do so in that your question involves interpretation of statutes and their application to a factual situation with which the state's attorney may be more familiar than we are.

We note that we have on previous occasions spoken to the question of whether a Board of County Commissioners may terminate the position of Deputy Sheriff. In a letter dated July 23, 1976 addressed to Traill County State's Attorney Dewel E. Viker, Jr., a copy of which is enclosed, we said:

Thus we would conclude that it is within the authority of county commissioners to eliminate the position of a deputy sheriff position. However, it would be within the authority of the sheriff to determine which of the deputies are to be retained to fill the position available.

Although the opinion to Mr. Viker was rendered in part on reliance upon the old Dakota Territory case of *Wilson v. Russell*, 31 N.W. 645 (Supreme Court of Dakota, 1887) that opinion also was supported by the language of the North Dakota Century Code Section 11-10-11, which provides as follows:

11-10-11. APPOINTMENT AND SALARY OF DEPUTIES AND CLERKS. The number and salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, register of deeds, county judge, and clerk of the district court shall be fixed by a resolution of the board of county commissioners. None of the officers mentioned in this section shall appoint as his deputy any other officer mentioned in this section nor the deputy of any such officer. The board of county commissioners upon written recommendation and approval of the state's attorney may appoint one or more assistant state's attorneys or clerks and fix their compensation in the same manner as in the case of deputies and clerks in other county offices. The work of such assistant state's attorneys shall be assigned by the state's attorney (Emphasis added).

While you do not state in your letter whether the woman filling the

position of Matron (apparently your wife) was also a deputy sheriff, it is clear from this section that the county sheriff has the authority to appoint both deputies and other "assistants" regardless of whether the "assistants" have been formerly appointed as a deputy sheriff. We do not believe that the authority of the sheriff to appoint deputies, clerks and assistants could have much meaning if the Board of County Commissioners were allowed to remove the appointments made by the sheriff. Nor do we find, from an examination of North Dakota Century Code Chapter 11-10 and other relevant law, that it is anywhere stated that the power of the county commissioners extends to removal of the employees appointed by the county sheriff, whether such employees are deputy sheriff, assistants, or clerks. We would therefore believe that the conclusion reached in the opinion to Mr. Viker concerning the authority of the county commissioners to dismiss a particular deputy sheriff is applicable to other "assistants" as well. That is, that the county commissioners, in their authority to control county fiscal affairs through the operation of section 11-10-11, may terminate a position but may not dismiss or "fire" a particular "assistant" of the county sheriff. The sheriff, responsible to the people of the county through the election process, is the county officer responsible for the performance of a particular "assistant".

In exercising their authority to terminate the position of clerk, assistant, or deputy under Section 11-10-11, the county commissioners may terminate such a position only, of course, within the confines of other legal requirements. We note that one such requirement, bearing upon the employment of Matrons in the Grand Forks County Jail, has been established by the Judges of the First Judicial District under the authority of North Dakota Century Code Section 12-44-04. That section provides:

12-33-04. JUDGES OF DISTRICT COURTS SHALL PRESCRIBE RULES FOR JAILS. The judges of the district courts of several judicial districts of this state, from time to time as they may deem necessary, shall prescribe, in writing, rules for the regulation and government of the jails in the several counties within their respective districts, upon the following subjects:

1. The cleanliness of the inmates.
2. The classification of the inmates in regard to sex, age, and crime, and also insane persons, idiots, and lunatics.
3. Beds and clothing.
4. Warming, lighting, and ventilation of the jail.
5. The employment of medical and surgical aid when necessary.
6. Employment, temperance, and instruction of the inmates.
7. The supplying of each inmate with a Bible.
8. The communications between inmates and their counsel

and other persons.

9. The punishment of inmates for violation of the rules of the jail.
0. Such other regulations as the judges may deem necessary to promote the welfare of said inmates, but such rules shall not be contrary to the laws of the state.

Rules adopted pursuant to this section are to be delivered to the Board of County Commissioners (North Dakota Century Code Section 12-44-06) and must be complied with by the county sheriff (North Dakota Century Code Section 12-44-12).

Pursuant to Section 12-44-04, the judges of the First Judicial District adopted on December 12, 1977, the "Rules For The Regulations And Government Of County Jails In The First Judicial District, State of North Dakota", a copy of which is enclosed. We note that Rule 13 of these regulations provides as follows:

13. JAILER IN ATTENDANCE: THE JAILER SHALL BE ON DUTY AT ALL TIMES WITHIN HEARING DISTANCE OF THE PRISONER AND SHALL RESPOND TO ALL COMMUNICATIONS MADE BY THE PRISONER TO THE JAILER. WHEN FEMALE PRISONERS ARE BEING HELD WITHIN THE JAIL, A MATRON SHALL BE AVAILABLE, ON CALL, AT ALL TIMES.

Under Rule 13, a Matron must be "available" or "on call". This language does not appear to require the employment of a full-time Matron, but only one who is "available". Termination of the entire position of Matron would not, however, appear to further the availability of the Matron required by Rule 13.

The private contractual rights of the parties to any agreement for the Matron's services should also be respected. Whether or not any termination of the Matron's position was done in a manner respectful of these rights, we are unable to determine under the facts that you have provided to us and these issues would, in any event, be a matter upon which a private attorney should be more appropriately consulted.

In conclusion and in answer to your question, we believe that the Board of County Commissioners has only the authority to terminate the position of Matron, as long as compliance is maintained with the requirements of those rules adopted by the First Judicial District under the authority of Section 12-44-04.

Sincerely,

ALLEN I. OLSON

Attorney General