

OPINION
78-76

September 29, 1978 (OPINION)

Mr. William G. Goetz
Adams County State's Attorney
Adams County Courthouse
Hettinger, ND 58639

Dear Mr. Goetz:

This is in response to your inquiry of September 21, 1978, wherein you state:

As Adams County, North Dakota States Attorney I herein request an opinion from your office concerning location of polling places of county elections. Pursuant to the North Dakota Century Code Section 16-09-05, the Board of County Commissioners may change any voting place any precinct and that said voting place may be located in an adjacent county. I would like your opinion concerning whether this would give the Board of County Commissioners the power to locate the voting place in an adjacent county outside the boundaries of the State of North Dakota.

The County of Adams is adjacent to the County of Perkins, State of South Dakota, and the voting places within precinct which are located in the extreme portion of Adams County are now in such a condition that they cannot be used as voting places. Travel to the closest available voting place within the county or adjacent county within North Dakota would mean travel for the voters of approximately 40 miles. Travel to a voting place in an adjacent county outside of the State would mean travel of approximately 5 miles for most voters.

There is no statutory law directly related to your inquiry. Chapter 16-09 of the North Dakota Century Code provides for the designation of precincts and voting places. Sections 16-09-25 and 16-09-06 provides that a voting place for a particular precinct may be placed outside of the boundaries of the county. These statutes, however, do not provide that such voting place may be situated outside the state boundary, but they do not specifically prohibit same.

As a general rule, however, a voting place may not be situated outside state boundaries except statutory provisions may allow for an absentee voting process. See, School Directors v. National School Furnishing Co., 53 Ill. App. 254; 26 Am. Jur.2d., "Elections", section 228. Most jurisdictions hold that statutes governing the place of voting are construed as mandatory and subject to strict enforcement. See, Turnis v. Board of Education, 109 N.W.2d. 198 (Ia.); 26 Am. Jur.2d., "Elections", section 228.

Having a voting place outside the state's boundaries could create jurisdictional problems in the event any problem would arise in the conduct of the election officials or an elector.

The state's ability to respond to any difficulties that may arise could be hampered by lack of jurisdiction.

It is our opinion, therefore, that a voting precinct may not be established outside state boundaries. In so ruling we recognize the hardship that may result in rural areas where the main trade center is in another state and where the main roads lead to points outside the state. The main consideration in choosing a polling place should be the convenience of the majority of voters. The voting place should not be picked so as to defeat the rights of electors. It is our hope that a suitable voting place can be found within or near the precinct. Such place need not be a public place. A private business establishment, a private home, or a other privately owned building is suitable provided there is sufficient room for the election officials to carry out their duties and provided a private voting booth or area is available.

I trust this will sufficiently answer your inquiry.

Sincerely,

ALLEN I. OLSON

Attorney General