Office of the Attorney General
State of North Dakota

Opinion No. 81-119

Date Issued: October 30, 1981

Requested by: Tom Slorby
                        Ward County States Attorney

--QUESTION PRESENTED--

I.

Whether a county which elects its county commissioners at large pursuant to a court order resulting from the filing of an unlawful redistricting plan following the 1970 federal decennial census is required to redistrict following the 1980 decennial census.

II.

Whether all county commissioners in a county currently on an atlarge system would be required to stand for election at the general election in November, 1982, if a redistricting plan is filed.

III.

Whether a county which has elected its commissioners at large following a failure to properly redistrict pursuant to Section 11-07-03, of the North Dakota Century Code, and which chooses by a vote of electors pursuant to Section 11-07-06, N.D.C.C., to continue the at-large system in June, 1982, must elect all new county commissioners at the general election in November, 1982.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that a county which currently elects its county commissioners at large pursuant to a court order resulting from the filing of an unlawful redistricting plan filed following the 1970 federal decennial census is required to redistrict following the 1980 decennial census.

II.

It is my further opinion that all county commissioners in a county currently on an at-large system would be required to stand for election at the general election in November, 1982, if a proper redistricting plan is filed.

III.

It is my further opinion that a county which has elected its commissioners at large following a failure to properly redistrict pursuant to Section 11-07-03, N.D.C.C., and which chooses by a vote of electors pursuant to Section 11-07-06, N.D.C.C., to continue the at-large system in June, 1982, must elect all new county commissioners at the general election in November, 1982.

--ANALYSIS--

I.

Section 11-07-02, N.D.C.C., requires that each redistricting board shall 'within three months after the official publication of each decennial census, meet at the call of the chairman to organize as provided in this chapter and to consider redistricting' and further provides that the board shall redistrict if such action is required. Since Section 11-11-02, N.D.C.C., requires that with certain exceptions all county commissioners be elected from districts, it is my opinion that counties which currently elect their commissioners at large due to failure to redistrict following the 1970 federal decennial census, regardless of whether a court order is involved, are required to provide for county commissioner districts following the 1980 federal decennial census. Failure to file a proper redistricting plan will result in the county commissioners continuing to be elected at large.

II.

Attorney General's Opinion 81-117, issued October 30, 1981, to Representative Earl Strinden provides that all county commissioners are required to stand for election at the general election in November, 1982. There is an exception for commissioners from those counties which are not required to redistrict pursuant to Section 11-07-02, N.D.C.C., (because there is not a 10% variance between districts), and commissioners from those counties which have previously elected to choose their county commissioners on an at-large system pursuant to Section 11-07-06, N.D.C.C.

III.

Section 11-07-06, N.D.C.C., provides as follows:

'Section 11-07-06. PETITIONS--SIGNERS REQUIRED--SUBMISSION OF QUESTION TO VOTERS.--The board of county commissioners, upon receipt of a petition signed by at least ten percent of the electors of the county as determined by the number of votes cast for the

office of governor at the preceding general election, shall, in accordance with applicable provisions of title 15, cause the question of whether commissioners shall be elected at large to be submitted to the voters of the county at the next succeeding primary or general election. If approved by sixty percent of the electors voting at such election, all county commissioner districts in such county shall be immediately dissolved, and thereafter as the term of office of each member of the board of county commissioners expires, such office shall be filled by an election at large.'

Attorney General's Opinion 81-117, issued October 30, 1981, to Representative Earl Strinden requires that county commissioners from those counties in which commissioners were elected at large following the 1970 federal decennial census and which will continue to be elected at large following the 1980 decennial census must stand for election in the 1982 general election unless such commissioners are elected at large pursuant to an election held pursuant to Section 11-07-06, N.D.C.C. However, it is my opinion that an election at 1982 primary election to elect county commissioners at large pursuant to Section 11-07-06, N.D.C.C., would not alter the requirement that all county commissioners stand for election at the 1982 general election. Section 16.1-11-01, N.D.C.C., provides that candidates for the office of county commissioners are to be nominated at the primary election. A system which would, in effect, determine the number of offices which are to be filled by election at the same primary election at which nominations for those offices are to be made is clearly unworkable and could not have been intended by the legislature.

In my opinion, if a county elects to choose its county commissioners on an at-large basis pursuant to Section 11-07-07, N.D.C.C., at the June, 1982, primary election, all five county commissioner seats shall nevertheless be open for election at the general election in November, 1982, and the commissioners elected at that election shall continue to serve at large.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the questions presented are decided by the courts.

Robert O. Wefald
Attorney General

drafted by: John W. Morrison
              Former Assistant Attorney General