

Office of the Attorney General
State of North Dakota

Opinion No. 81-134

Date issued: December 22, 1981

Requested by: Cynthia Rothe
Cass County State's Attorney
(issued to Robert G. Hoy, her successor in office)

--QUESTION PRESENTED--

Whether county commissioners elected at large to a four year term in 1980 in a county which was subsequently divided into districts following the 1980 federal decennial census in which each commissioner resides in a separate district, are required to run for reelection in 1982.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that county commissioners who were elected at large in 1980 in a county which was subsequently divided into districts following the 1980 federal decennial census in which each commissioner resides in a separate district, are not required to run for reelection in 1982 if they each reside in odd numbered districts and the election is only for even numbered districts or vice versa.

--ANALYSIS--

Attorney General's Opinion 81-117, issued October 30, 1981, held that Section 11-07-04, N.D.C.C., as it existed prior to November 19, 1981, required that all county commissioners elected to four year terms in 1980 must run for re-election in 1982. An exception to this requirement exists for those commissioners from counties which redistricted following the 1970 federal decennial census and which are not required to redistrict following the 1980 federal decennial census and those commissioners from counties where an election has been made pursuant to Section 11-07-06, N.D.C.C., to elect commissioners at large.

Following this opinion, the 47th Legislative Assembly, meeting in reconvened regular session, included an amendment of Section 11-07-04, N.D.C.C., within Senate Bill No. 2440 (the reapportionment bill.) That bill contained an emergency clause and was approved by a two-thirds majority of each house, and therefore became effective upon approval by the Governor on November 19, 1981.

As amended, Section 11-07-04, N.D.C.C., reads as follows:

11-07-04. COMMISSIONERS' TERMS OF OFFICE--STAGGERED TERMS.

1. When redistricting is completed or if failure to redistrict requires at-large election of commissioners as provided in section 11-07-03, all commissioners then holding office who will be elected in the same manner, either from districts or at large, as they were elected at the last election shall complete the remainder of that term of office. However, an election must be held at the next general election in any district where redistricting places two or more holdover commissioners in that district or leaves a district without a commissioner residing in the district. In those counties retaining the same method of electing county commissioners as that utilized prior to a decennial, or other, redistricting, elections shall continue on a staggered basis in accordance with the same classes in force prior to the effective date of a redistricting under this chapter. At the first general election following redistricting of the county or election of commissioners at large, the county commissioner offices held by commissioners whose terms would end in the month of January following that general election shall be open for election.
2. If the county previously elected county commissioners at large and the county has been divided into districts, those elected in districts designated by even numbers shall constitute one class and those elected in districts designated by odd numbers shall constitute the other class. If election of commissioners at large is necessary and the county previously was districted, classes of such commissioners shall be determined by assigning a number to their respective offices according to the numerical total of the votes cast for them at the general election at which they were elected. The commissioners of one class elected in the first election held following a redistricting pursuant to this chapter shall hold office for two years and those of the other class shall hold office for four years. The determination of the two classes shall be by lot so that one-half of the commissioners, as nearly as practicable, may be elected biennially. The county judge shall perform the lot in the presence of all of the newly elected commissioners affected by this subsection within thirty days after the date of the first general election following redistricting or election of commissioners at large, if required, and shall certify in writing the results of such lot to the county auditor within five days after its completion.

It is my opinion that Section 11-07-04(1), N.D.C.C., applies only to those counties where county commissioners will be elected following redistricting action or the absence thereof in the same manner, either from districts or at large, as they were prior to such action or absence thereof. In counties in which the method of election of county commissioners is changed following the 1980 federal decennial census, Section 11-07-04(2), N.D.C.C., controls the election of county commissioners in 1982.

The clear intent of the Legislature in Senate Bill No. 2440 in amending Section 11-07-04, N.D.C.C., was to reduce the number of county commissioners who had to run for reelection in 1982 who had been elected to four year terms in 1980. Section 1-02-38, N.D.C.C., states that in the enacting of a statute, it is presumed that the Legislature intended the entire statute to be effective, that a just and reasonable result is intended, and that a result feasible of execution is intended. If at all possible, Section 11-07-04, N.D.C.C., as amended must be interpreted in such a way that the legislative intent can be fulfilled.

Section 11-07-04(1), N.D.C.C., specifically provides that an election must be held at the next general election in any district where redistricting places two or more holdover commissioners in that district or leaves that district without a commissioner residing in the district. The clear inference to be drawn from this language is that a holdover commissioner placed in a district in which no other holdover commissioner resides does not have to stand for election at the next general election. So long as the districts can be numbered in such a way that all the holdover commissioners are all in the same class of district, whether it be even or odd, no such holdover commissioner would be required to run for reelection. If all the holdover commissioners, for instance, lived in odd numbered districts, then presumably the election would only be held for commissioners in even numbered districts.

--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 question presented is decided by the courts.

Robert O. Wefald
Attorney General