

Date Issued: February 2, 1982 (AGO 82-6)

Requested by: Gerald Rustad, Williams County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether the eastern boundary of the first legislative district as described in section 54-03-01.7(1) of the North Dakota Century Code lies along the western shoreline of the Little Muddy River.

II.

Whether the governing bodies of cities and counties have complete discretion in the establishment of voting precincts and voting places.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that the eastern boundary of the first legislative district, as described in section 54-03-01.7(1), N.D.C.C., as the "western shore of Lake Sakakawea," is the western shoreline of the Little Muddy River.

II.

It is my further opinion that the governing bodies of cities and counties have complete discretion in the establishment of precincts and voting places.

- ANALYSIS -

I.

Section 54-03-01.7(1), N.D.C.C., provides for the eastern boundary of the first legislative district, which consists of the city of Williston and a portion of the surrounding rural area, as follows:

". . . thence south on the western shore of Lake Sakakawea until its intersection with the centerline of the Burlington Northern railway right of way. . . ."

Apparently some confusion has arisen as to the actual location of this eastern boundary due to the fact that the body of water referred to within the statute as Lake Sakakawea is locally known as the Little Muddy River and the fact that a portion of the area bounded on

the east by that body of water is located within Stoney Creek Township rather than Williston Township as described in section 54-03-01.7, N.D.C.C.

It is clear that in enacting this statute, the Legislature intended that the east boundary of Legislative District No. 1 be the western shoreline of that body of water known as either Lake Sakakawea or the Little Muddy River. In the minutes of the September 24, 1981, meeting of the reapportionment committee, the following statement appears at page 5:

The Chairman called on Senator Frank Wenstrom who represents District 1. . . . He suggested using the dike next to the Little Muddy River for the east boundary, 26th Street for the northern boundary, the highway curving around Williston and 16th Street on the west, and old city limits on the south.

This suggestion was adopted by the committee at page 11 of the same minutes.

On page 2 of the minutes of the October 13, 1981, meeting of the same committee, it is stated:

Committee counsel said the second section contains legal descriptions of the districts as approved in the last meeting except for the legal description for the First Legislative District. She said the dike was approved as the eastern boundary for that district at the last meeting. She said the shore of Lake Sakakawea was used instead in the bill draft because the dike does not extend the whole distance on the east side and an extended line of the dike was difficult to use because the dike does not run in a straight line. She said there was no population change in using the lake shore rather than the dike as the boundary line.

These excerpts reflect that the legislative committee responsible for drafting section 54-03-01.7, N.D.C.C., interchangeably referred to the same body as Lake Sakakawea or the Little Muddy River. Furthermore, it is presumed that in enacting a statute, the entire statute is intended to be effective. Section 1-02-38, N.D.C.C. The body of water locally referred to as the Little Muddy River is the only body of water on the east side of the city of Williston lying between twenty-sixth street and the Burlington Northern Railway right of way. Based on these factors, it is obvious that this body of water was intended by the Legislature to serve as an eastern boundary of District No. 1, regardless of whether the body is known as Lake Sakakawea or the Little Muddy River. Furthermore, based on the language contained in section 54-03-01.7(1), N.D.C.C., it is my opinion that the boundary is the shoreline of that body of water rather than the Corps of Engineers' take line, although the distinction is meaningless since presumably no electors reside between the shoreline and the take line.

Having established that the western shoreline of the body of water in question was intended by the Legislature to serve as the east boundary of Legislative District No. 1, it logically follows that that portion of Stoney Creek Township lying west of that boundary is

included within Legislative District No. 1. Whenever there is an irreconcilable conflict between a general provision in a statute and a special provision in the same statute, the special provision shall prevail. Section 1-02-07, N.D.C.C. Furthermore, whenever several clauses in the same statute are irreconcilable, the clause last in order of date or position shall prevail. Section 1-02-08, N.D.C.C. In this instance, there appears to be a conflict between that portion of section 54-03-01.7(1), N.D.C.C, which refers to "that part of the City of Williston and that part of the Williston Township in Williams County" and that portion of the statute which specifically describes the boundaries of the district. The boundary line description is particular as opposed to general and appears last in position within the statute. These factors, together with the legislative history discussed above, lead inescapably to the conclusion that Legislative District No. 1 is bounded on the east by the shoreline of the body of water known either as Lake Sakakawea or the Little Muddy River and includes that portion of Stoney Creek Township lying within such boundaries.

II.

Chapter 16.1-04, N.D.C.C., states that the board of county commissioners has the responsibility to establish precincts and voting places in each county, except in incorporated cities where the responsibility is placed with the city's governing body. These governing bodies are given the authority to alter the number of precincts and the location of voting places at their discretion.

In reviewing the legislative history behind chapter 16.1-04, N.D.C.C., one finds several proposals to regulate the manner in which voting precincts and voting places were to be established by the governing bodies of cities and counties. However, in all cases, these proposals were not adopted by the legislators. Instead, the legislative history indicates that the legislators intended to give the appropriate governing bodies complete discretion as to the establishment of precincts and voting places.

It should be noted that section 16.1-04-01(2), N.D.C.C., provides that the board of county commissioners may relinquish their jurisdiction over all or any portion of a township under its jurisdiction to a city for the purpose of establishing a voting precinct if a majority of the governing body of the city agrees to assume that jurisdiction. This authority gives the county commissioners a way to handle problems caused by portions of townships which lie without the corporate city limits yet within the same legislative district.

Where the county commissioners establish a voting place for persons residing within townships which are within different county commission districts, there appears to be no prohibition against the commissioners providing separate ballots for the different types of voters to ensure that the appropriate persons would be voting for the appropriate candidates and measures. Again, these are matters which are solely within the discretion of the governing body of the cities and counties.

- EFFECT -

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

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