

Date Issued: March 25, 1982 (AGO 82-21)

Requested by: Ronald A. Reichert, Medora City Attorney

- QUESTION PRESENTED -

Whether North Dakota law provides for the recall of elected city officials.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that North Dakota law does not provide for the recall of elected city officials.

- ANALYSIS -

Article III, Section 10 of the North Dakota Constitution provides for the recall of certain elected officials. That section states as follows:

Section 10. Any elected official of the state, of any county or of any legislative or county commissioner district shall be subject to recall by petition of electors equal in number to twenty-five percent of those who voted at the preceding general election for the office of governor in the state, county, or district in which the official is to be recalled.

The petition shall be filed with the official with whom a petition for nomination to the office in question is filed, who shall call a special election if he finds the petition valid and sufficient. No elector may remove his name from a recall petition.

The name of this official to be recalled shall be placed on the ballot unless he resigns within ten days after the filing of the petition. Other candidates for the office may be nominated in a manner provided by law. When the election results have been officially declared, the candidate receiving the highest number of votes shall be deemed elected for the remainder of the term. No official shall be subject twice to recall during the term for which he was elected.

This provision does not apply to cities since, by its own terms, it applies only to those elected officials "of the state, of any county or of any legislative or county commissioner district." In addition, the petition is required to be signed by twenty-five percent of the qualified electors who voted at the preceding general election for the office of governor "in the state, county, or district in which the official is to be recalled." If "city" were a jurisdictional entity to be included within the effect of this law, which I do not believe is the case, there would be no method for determining the number of signatures for such a recall petition. Therefore, I am of the opinion that Article III, Section 10 of the North Dakota Constitution is not applicable to elected city officials.

Article III, Section 1 of the North Dakota Constitution reserves to the people the power to recall certain elected officials. However, the Legislature has not provided for the recall of city officials.

- 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

Prepared by: Terry L. Adkins  
Assistant Attorney General