

Superseded by N.D.A.G. 86-20

Date Issued: May 14, 1982 (AGO 82-39) (AMENDED OPINION)

Requested by: Ben Meier, Secretary of State

- QUESTION PRESENTED -

Whether a candidate for judge of a county court in those counties which have agreed to share the services of a county judge must satisfy the residency requirement in one of the counties to the agreement.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a candidate for judge of a county court in those counties which have agreed to share the services of a county judge must satisfy the residency requirement in one of the counties to the agreement.

- ANALYSIS -

Section 27-07.1-02 of the North Dakota Century Code provides that two or more counties may enter into an agreement to provide for the election of a single county judge or any number of judges to serve the county courts of those counties. Attorney General's Opinion 82-15, issued on March 3, 1982, held that a candidate for judge of a county court in those counties which have agreed to share the services of a county judge must file a separate petition for nomination in each individual county.

The petition filing requirements for those interested in running for the position of judge of the county court are found in section 16.1-11-11, N.D.C.C. This section requires a candidate to present his petition to the county auditor "of the county in which he resides." Only one county auditor would be involved as an individual may have only one residence at one time. (section 54-01-26(2), N.D.C.C.) The requirement for filing the petition in the county in which the candidate resides is in line with the legal requirement that county officers must be qualified electors in that county in which they are elected. (section 11-10-04, N.D.C.C.) Among the requirements of a qualified elector is one which requires the person to be a resident within the precinct at least thirty days next preceding any election. (section 16.1-01-04, N.D.C.C.)

The conclusion drawn is that candidates for judge of the county court must file their petition for nomination in the county of their residence. However, this conclusion cannot be literally applied to those county judge candidates filing petitions in counties which have agreed to share the services of a county judge. To do so would defeat all multicounty agreements entered into pursuant to section 27-07.1-02, N.D.C.C., as a person is legally unable to have more than one residence at one time.

The statutes in chapter 27-07.1, N.D.C.C., do not address how these residence requirements affect those candidates for county judges in those counties which have entered into multicounty agreements to share the services of a county judge. There is nothing in the legislative history which indicates how sections 16.1-11-11, 16.1-01-04, and 11-10-04, N.D.C.C., are to be applied to those county judge candidates.

As sections 11-10-04 and 16.1-01-04, N.D.C.C., require candidates to be qualified electors and, in the case of county offices, to be residents of that county, it is my opinion that a candidate for judge of a county court in those counties which have agreed to share the services of a county judge must satisfy the residency requirement in one of the counties which have entered into the multicounty agreement.

In an opinion issued on September 14, 1978, the conclusion was made that a candidate's residency is determined, for election purposes, as of the date he assumes his office rather than the date of the primary or general election.

In Attorney General's Opinion 82-15, I concluded that a candidate for judge of a county court in those counties which have agreed to share the services of a county judge must file a separate petition for nomination in each individual county. These petitions for nomination must be accepted and filed by the county auditor so long as the candidate claims his residency for one of the counties to the multicounty agreement.

- 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.

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