

Office of the Attorney General  
State of North Dakota

Opinion No. 83-9

Date Issued: February 18, 1983

Requested by: Representative Steven J. Swiontek

--QUESTION PRESENTED--

Whether newly passed Article VII of the North Dakota Constitution gives authority to county commissions to act on their own in the elimination of elected county offices.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that newly passed Article VII of the North Dakota Constitution does not give authority to county commissions to act on their own in the elimination of elected county offices.

--ANALYSIS--

In the primary election of 1981, Measure No. 1, which created a new political subdivision article in the Constitution of North Dakota, was approved by the voters of the State of North Dakota. A major point of the new Article VII was that county functions, rather than county officers, would be stated in the Constitution.

Article VII, Section 8 of the Constitution of North Dakota, reads as follows:

SECTION 8. Each county shall provide for law enforcement, administrative and fiscal services, recording and registration services, educational services, and any other governmental services or functions as may be provided by law. Any elective county office shall be for a term of four years.

In reviewing the minutes of the committee hearing held on the proposed political subdivision article, one is impressed by comments made at the hearing indicating the article was designed to be as broad as possible. Specific implementation of the authority contained in the new article was designed to be left to future sessions of the legislature.

Nowhere in Article VII of the Constitution of North Dakota is there any authority provided to the county commissions to eliminate elected county offices. Indeed, the only place such a subject is mentioned is in Section 9, Article VII, N.D. Const., dealing with the placement of the question of elimination of elected offices on the ballot by a petition of electors of the county. Thus, only the voters of the county currently have the authority to

seek the elimination of county offices under Article VII, N.D. Const. This conclusion is further supported by reference to the minutes of the Interim Judiciary C Committee meeting of June 25, 1980, which was considering this proposed political subdivision article for presentation to the voters. One of the committee members stated that:

. . . it was important to remember that the county commissioner's power is simply the power to put the question to the people and that they cannot eliminate an office by their own action.

In addition, Section 11-10-02 of the North Dakota Century Code sets out specific elective county offices by name and, until such laws are changed by the Legislative Assembly, they remain in effect under the existing constitutional provisions outlined above.

--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.

Calvin N. Rolfson  
Deputy Attorney General

Prepared by: Terry L. Adkins  
Assistant Attorney General