

Overruled in part by N.D.A.G. 90-L-63

Date Issued: May 13, 1986 (AGO 86-20)

Requested by: Honorable Ben Meier, Secretary of State

- QUESTIONS PRESENTED -

I.

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

II.

Whether a candidate for judge of a county court in those counties which have agreed to share the services of a county judge is required to file a separate petition for nomination in each individual county.

III.

Whether the signature requirement for a petition of nomination for a multicounty county judgeship is based on a percentage of the total votes cast for the office at the most recent general election in the county in which a candidate chooses to file.

- ATTORNEY GENERAL'S OPINIONS -

I.

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 is not required to satisfy the residency requirement in one of the counties to the agreement.

II.

It is my further opinion that a candidate for judge of a county court in those counties which have agreed to share the services of a county judge is not required to file a separate petition for nomination in each individual county.

III.

It is my further opinion that the signature requirement for a petition of nomination for a multicounty county judgeship is based on a percentage of the total votes cast for the office at the most recent general election in the county in which a candidate chooses to file.

- ANALYSES -

I.

N.D.C.C. section 27-07.1-02, 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. N.D.C.C. section 27-07.1-02 provides, in part, as follows:

27-07.1-02. MULTICOUNTY AGREEMENTS TO SHARE SERVICES OF JUDGES. The candidate elected as judge of the county court in those counties which have agreed to share the services of a county judge is exempt from the requirement of section 11-10-04, but must be a resident of this state at the time of nomination.

11-10-04. OFFICER MUST BE QUALIFIED ELECTOR - EXCEPTIONS. Except as otherwise specifically provided by the laws of this state, a county officer must be a qualified elector in the county in which he is chosen or appointed, and a county commissioner must be a qualified elector in the district from which he is chosen.

(Emphasis supplied.)

Therefore, a candidate for judge of a county court in those counties which have agreed to share the services of a county judge is not required to satisfy the residency requirement in one of those counties to the agreement. The candidate is only required to be a resident of this state at the time of his or her nomination.

Due to a 1983 legislative amendment to N.D.C.C. section 27-07.1-02, which eliminated the residency requirement for multicounty judicial candidates, 1982 N.D. Attorney General's Opinion 39 is obsolete in reference to the residency requirement for multicounty judicial candidates and is, therefore, superseded by this opinion.

North Dakota law, as found at N.D.C.C. section 27-07.1-02, 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. Prior to 1983, candidates desiring election as county judges in counties where multicounty agreements existed were required to file a petition of nomination in each county. See 1982 N.D. Attorney General's Opinion 15. However, the 1983 Legislative Assembly amended N.D.C.C. section 27-07.1-01 to require candidates for multicounty county judgeships to satisfy the filing requirements of only one county.

27-07.1-01. COUNTY COURTS ESTABLISHED IN ALL COUNTIES
- ELECTION OF JUDGES.

. . . In those counties which have entered into an agreement pursuant to section 27-07.1-02, one or more judges of the county court shall be elected by the eligible voters of the counties entering into the agreement. Each candidate for the office of judge of the county court in a county which has entered into a multicounty agreement shall comply with the appropriate filing requirements in any county in the multicounty area, and the county auditor in that county shall certify to the county auditors of other counties which entered into the multicounty agreement the names of the candidates filing for the position.

(Emphasis supplied.)

The filing requirements of N.D.C.C. section 27-07.1-01 must be read in concert with the residency requirements of N.D.C.C. section 27-07.1-02. With no county residency required pursuant to N.D.C.C. section 27-07.1-02, a candidate may freely choose to meet the filing requirements of any one county that has entered into a multicounty agreement for judicial services. Once a candidate has met the filing requirements in an individual county, the affected county auditor must certify to the other auditors to the multicounty agreement the names of the candidates filing for the position.

Due to the 1983 legislative amendment to N.D.C.C. section 27-07.1-01, 1982 N.D. Attorney General's Opinion 15 is obsolete and is superseded by this opinion.

III.

The filing requirements for a county officer's petitions of nomination are found in N.D.C.C. section 16.1-11-11. Specifically, the requirement as to the number of signatures on the candidate's petition of nomination is found in N.D.C.C. section 16.1-11-11(2)(c)(1), which provides as follows:

- (1) If the office is under no party designation, the signature of not less than two percent and not more than five percent of the total vote cast for the office at the most recent general election at which the office was voted upon.

Even though N.D.C.C. sections 27-07.1-01 and 27-07.1-02 specify that a candidate is elected by the total combined vote of those counties that have entered into a multicounty agreement for judicial services, nonetheless the candidate is required to meet the filing requirements of only one county to the agreement as provided for by N.D.C.C. section 27-07.1-01.

Therefore, applying the petition signature requirement of N.D.C.C. section 16.1-11-11(2)(c)(1) to the clear language of N.D.C.C. section 27-07.1-01, it is my opinion that the signature requirement for a petition of nomination for a multicounty county judgeship is based on a percentage of the total votes cast for the office at the most recent general election in the county in which the candidate chooses to file. However, as

provided in N.D.C.C. section 16.1-11-11(2)(c)(5), in no case shall more than three hundred signatures be required.

- EFFECT -

This opinion is issued pursuant to N.D.C.C section 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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