

LETTER OPINION
94-L-150

May 11, 1994

Mr. Michael S. McIntee
Drake City Attorney
P.O. Box 90
Towner, ND 58788-0090

Dear Mr. McIntee:

Thank you for your recent letter concerning joint city/county elections. Your first question concerns the application of N.D.C.C. ? 40-21-03 which provides, in part, that "[t]he city council shall enter into an agreement with the governing body of the county or counties in which the city lies concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, and the apportioning of election expenses." This language was enacted in 1991 but first became effective January 1, 1994. 1991 N.D. Sess. Laws ch. 442, ? 16. As you noted, I issued an opinion March 17, 1994, to Alvin A. Jaeger, the Secretary of State, in which I determined that a biennial city election must be held pursuant to an agreement with the county or it would be invalid, except in the case of certain home rule cities. 1994 N.D. Op. Att'y Gen. 39.

You asked what would happen if the parties could not reach a mutually satisfactory agreement. The statute does not set out any mechanism for resolving disputes between cities and counties, but it does require them to enter into agreements. N.D.C.C. ? 40-21-03. See also N.D.C.C. ? 40-21-02. Even though these statutes use the term "agreement" between cities and counties, such an "agreement" is mandatory. If the parties are initially unable to arrive at a mutually satisfactory agreement, they have no choice but to continue negotiating until an agreement is in place in sufficient time to properly conduct the election. I understand that the city of Drake and McHenry County met on May 3, 1994, to attempt to forge an agreement. It is also my understanding that the meeting did not resolve all your differences; therefore, I urge you to

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continue to meet until you are able to resolve your differences. As public officials charged with a clear statutory duty, you must do so.

You expressed concern that a city could be forced by a county to pay all costs of an election. However, paragraph 4 of the proposed agreement would only require the city to pay 75% of the election board costs of the 1992 city elections, which appears to be advantageous for Drake.

As I understand it, the city of Drake is also concerned because it is proposed that the Drake precinct would include rural townships which could result, inter alia, in the city of Drake having non-residents on its election board. N.D.C.C. ? 16.1-05-01 requires an election board in attendance at each primary, general, and special statewide or legislative district election as well as at county elections. The election board consists of an election inspector and at least two election judges. Id. A city appoints the inspector and the judges usually are designated political party representatives. Id.

You indicated that in prior Drake city elections, pursuant to N.D.C.C. ? 40-21-09, the city constituted a single election district or voting precinct. Now the county proposes to add one or more townships to the Drake voting precinct in a combined city/county election so that Drake's voting precinct would consist of the city of Drake plus one or more rural townships.

In your letter you stressed that Drake city council has the statutory authority, pursuant to N.D.C.C. ? 16.1-04-01(2) to alter the number and size of precincts located within its boundaries and to accept a township into the voting precinct. You further indicate that the Drake city council has never voted to accept a township within its voting precinct as provided for in the statute.

As noted above, N.D.C.C. ? 40-21-03 requires a city council to enter an agreement with the governing body of the county or counties in which the city lies

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concerning the use of a single canvassing board, sharing of election personnel, the printing of election materials, and the apportioning of election expenses. The county has offered a written agreement to the city. As part of this process and presumably to decrease costs, the county is proposing that the city of Drake be combined with one or more rural townships to form a single voting precinct. Under this proposal, election costs may be saved because there would be a single election board for the expanded voting precinct in the combined election.

However, at the present time the city of Drake consists of a single election district or voting precinct pursuant to N.D.C.C. ? 40-21-09. Further, "[w]ards and precincts established under this section constitute election districts for all state, county, and city elections." Id.

N.D.C.C. ? 16.1-04-01(2) provides in part that

The board of county commissioners may relinquish the jurisdiction provided under subsection 1 over all or any portion of a township or townships 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 such jurisdiction. The governing body of a city, by majority vote, may return jurisdiction granted herein to the county and the county shall accept that jurisdiction.

N.D.C.C. ? 16.1-05-02(1) provides that "every member of an election board and each poll clerk must be a qualified elector of the precinct in which the person is assigned to work and must be eligible to vote at the polling place to which the person is assigned."

As noted in 1994 N.D. Op. Att'y Gen. 39, "[t]he primary intent and purpose of the requirement that cities and counties enter into an agreement to conduct joint elections on the same day using the same election officer and boards is to save taxpayer dollars by conducting elections together, resulting in the use of fewer personnel, and savings on equipment and facilities." Although combining rural townships with the city of Drake may accomplish the legislative purpose of saving taxpayer dollars, other provisions of law cannot be ignored, including N.D.C.C. ? 16.1-04-01(2), which grants a city the discretion to accept or return jurisdiction over townships in

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elections as well as the provision in N.D.C.C. ? 40-21-09 that the precincts established under that section (e.g., a single voting precinct in the city of Drake) constitute election districts for "all state, county, and city elections."

In construing these statutes, there are several well settled rules of statutory construction which are applicable. The primary purpose of statutory construction is to ascertain the intent of the Legislature. Further, any interpretation of a statute must be reasonable and consistent with the intent of the Legislature and conflicting *pari materia* provisions are to be reconciled, if possible. Puklich and Swift, P.C. v. State Tax Comm'r, 359 N.W.2d 846, 849 (N.D. 1984).

N.D.C.C. ? 40-21-03 mandates that the city council enter into an agreement with the county. Any election held without such an agreement would be invalid. 1994 N.D. Op. Att'y Gen. 39. However, in construing this requirement with the above-quoted language from N.D.C.C. ? 40-21-09 and N.D.C.C. ? 16.1-04-02, it is my opinion that in negotiating an election agreement a county may not unilaterally mandate that a lone city precinct be combined with rural townships to form one election precinct. Although it may be more cost efficient for the city to agree to include rural townships in the voting precinct so that the townships and the city could share one election board and reduce expenses, to allow a county to mandate a city to do so would render meaningless the above quoted language from N.D.C.C. ? 16.1-04-01(2) as well as the fourth to last sentence in N.D.C.C. ? 40-21-09. See Keyes v. Amundson, 343 N.W.2d 78 (N.D. 1983).

While I have concluded that a county may not lawfully compel a city to accept jurisdiction of rural townships to establish a single voting precinct, a city could agree to do so.

Again, I urge the parties to immediately resume negotiations to finalize an agreement.

Sincerely,

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ATTORNEY GENERAL

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