

OPINION
46-216

March 4, 1946 (OPINION)

OFFICE

RE: Public Power to Discontinue

This is in reply to your letter of March 1 addressed to the Attorney General.

You state the village of Nome voted at the annual election had in 1945 to adopt the system of electing the trustees from the village at large rather than from districts. The trustees were elected at the 1945 election to serve for a period of two years as provided by law. The question now arises as to whether or not the trustees who have an unexpired term of one year should be voted on or elected to serve a term of two years from the 1946 election in that there are no longer any districts in the village to be represented.

We believe that the trustees whose terms expire should be elected at large but the trustees whose terms do not expire until a year from now should serve out their terms. There is no statute providing that their terms shall expire upon election changing from the district system to the system at large.

Section 40-0704 of the North Dakota Revised Code of 1943 fixes the length of term of village trustees at two years--that is from the time of their election until the third Tuesday in March of the second year following their election or until their successors are elected and qualified.

It should be observed that the offices of trustees are not abolished by the change in the system. There is merely a change in the method and manner of election, and since there is no statute providing that the term of office of a trustee shall be cut off upon the change from the district method to the method at large, it is our opinion that the trustees whose terms do not expire will hold until their terms do expire.

The Legislature has created the office of village trustee and fixed the length of the term, and in the absence of any provision authorizing the village to cut off the term, the village may not do so.

The authority in the government which possesses the power to create an office has, in the absence of some provisions of law passed by a higher authority (that is, in the case of a municipal authority, some statutory or constitutional provision; in the case of the Legislature, some constitutional provision), the implied power to abolish the office it has created, or to consolidate two or more offices it has created, and since every public office is the creation of some law it continues only so long as the law to which it owes its existence remains in force; hence, when such law is authoritatively abrogated, the office ceases unless perpetuated by virtue of some other legal provision. (46. C.J. 934, Sec. 30)

Therefore, as we have pointed out, since the office of trustee is not abolished, and since there is no statute authorizing the village board to declare the term of the trustee at an end, the trustees whose terms have not expired will serve until the expiration of their term, after which time the trustees will be elected at large.

NELS G. JOHNSON

Attorney General