

OPINION
48-73

February 9, 1948 (OPINION)

COUNTY

RE: Redistricting May Be Done Within Reasonable Time

This office is in receipt of your letter under date of February 3, 1948, with reference to the validity of the action taken by the redistricting board of Sargent County on January 6, 1948.

In your letter you outline the history of the proceedings leading up to the redistricting of the county.

We assume from what you say in your letter that the petition filed with the County Auditor was sufficient and that it conformed with the requirements of section 11-0703 of the 1943 Revised Code. You say that "The question now which interested citizens desire to have submitted are two. The first one is--was the action of the redistricting board taken on January 6, 1948, legal and effective?"

You say further - "If you answer that question in the affirmative, there is no use to go further.

"If you answer that question in the negative then the following question presents itself. Can the redistricting board still act on the petition before it or will it be necessary, in order to vest them with jurisdiction, that new petitions be circulated?"

We do not understand the import of your second question. For if the board did not have jurisdiction to act on the petition on January 6, 1948, it seems to us that it would logically follow that it would not have jurisdiction to act at a later date.

In your opinion given to Elmer Walsted, Chairman of the Board, on January 7, 1948, you said:

"It is the writer's opinion that the redistricting board did not proceed within the twenty days after the petition to redistrict was filed with the County Auditor and did not proceed within the twenty days to redistrict the county into commissioner's districts; therefore, the actions of the county redistricting board are void of no force and effect, and the present commissioner's districts remain as they were prior to the action of the redistricting board."

In a letter addressed to Gerald W. Brekke under date of January 30, 1948, a copy of which you undoubtedly have, we said:

"It is my opinion that section 11-0703 requiring the County Auditor to call a meeting of the board within twenty days after a sufficient petition for redistricting has been filed merely prescribes the duty of the County Auditor as to calling a meeting of such board and that his failure to call such meeting

does not affect the validity of the petition filed or the jurisdiction of the redistricting board to act thereon.

"It is my opinion, that section 11-0703 requires the County Auditor to call a meeting of the board within twenty days after a sufficient petition for redistricting has been filed and that the petitioners, and the public, may assume that he will do so. No proceedings by mandamus, or otherwise, may be commenced to compel him to call such meeting until after the expiration of twenty days after such petition has been filed. But if, after the expiration of twenty days, a meeting of the redistricting board has not been called, mandamus proceedings to compel the Auditor to call a meeting of the board may be instituted.

"It must not be lost sight of that the County Auditor is merely an administrative officer. And it cannot logically be contended that his failure to perform a purely ministerial duty within a certain period of time can affect the validity of a sufficient petition for the redistricting of the county or the jurisdiction of the redistricting board to act thereon."

We adhere to the views thus expressed. It was undoubtedly the intention of the legislature that the County Auditor should be given twenty days in which to determine the sufficiency of petitions for redistricting. A sufficient petition must be signed by "at least twenty-five percent of the qualified electors of the county as determined by the number of votes cast for the office of Governor at the preceding general election."

As we interpret your opinion given to Mr. Elmer Walsted, your only reason for holding that the redistricting board had lost jurisdiction to consider the petition, and to act thereon, was the failure of the board to meet and proceed with the redistricting of the county within twenty days after the petitions had been filed. As far as this office is informed nothing has been disclosed to indicate that the action of the redistricting board if it had met and acted within twenty days after the petitions were filed would have been different than the action taken by the board on January 6, 1948, or that anything has transpired that would affect the need for redistricting as requested by the petitioners.

It is, therefore, our conclusion that the action of the redistricting board taken on January 6, 1948, is legal and valid. For although section 11-0703 of the Revised Code provides that "the board shall proceed at once to redistrict the county into commissioner's districts," nothing is contained in any section of chapter 11-07 which invalidates the action of the board if not taken "at once". A reasonable interpretation of the statutes justifies the construction that the board may act within a reasonable time and that the redistricting of a county may be done after care consideration in order that the districts be "as regular and as compact in form as practicable and as nearly equal in population as possible". (Section 11-0704).

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