

OPINION
56-66

December 21, 1956 (OPINION)

COUNTIES

RE: Officers - Qualifications

We are in receipt of your letter of December 19, 1956, in which you request an interpretation of section 11-1005 of the N.D.R.C. of 1943. That section reads as follows:

"WHEN TERMS OF COUNTY OFFICERS COMMENCE: WHEN OFFICERS QUALIFY. Except as otherwise specifically provided by the laws of this state, the regular term of office of each county officer, when he is elected for a full term, shall commence on the first Monday in January next succeeding his election and each such officer shall qualify and enter upon the discharge of his duties on or before the first Monday in January next succeeding the date of his election or within ten days thereafter. If the office to which an officer is elected was vacant at the time of his election or becomes vacant prior to the date fixed for the commencement of his term, he may qualify and enter upon the duties of his office forthwith even though he was not elected to fill such vacancy."

As you point out, under the terms of this statute, newly elected county officers will not be qualified for office until January 7, 1957. Your question is whether or not the present county officials are to hold over until the seventh of January.

Article 10, Section 173, of the North Dakota Constitution, specifically provides in part that the register of deeds, county auditor, treasurer, sheriff, state's attorney, county judge and clerk of the district court shall hold office until their successors are elected and qualified. Section 11-2101 provides that the public administrator shall hold his office for four years and until his successor is elected or appointed and qualified.

While there is no specific provision to this effect applicable to some of the other county officers, it is generally held that even in the absence of a constitutional or statutory provision of this type an incumbent of an office will hold over after the conclusion of his term until the election and qualification of a successor. (See 43 Am. Jr. 20). Since the newly elected county officers will not be qualified to enter upon the discharge of their duties until January 7, 1956, it is our opinion that the present county officials are to hold over until that date.

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Attorney General