

**OPINION  
58-100**

May 23, 1958 (OPINION)

ELECTIONS

RE: Combining Precincts

This is in reply to your request for an opinion in regard to combining election precincts.

You inform us that in the three adjoining precincts concerned there were thirteen votes cast in one precinct, twenty-five in another, and ten in the other, and that at the present time there are even less voters than at that time. You further inform us that it is difficult to even obtain boards to serve in two of the precincts, and that actually there is no place to hold elections in these two precincts. The voters of the precincts concerned are amiable to combining the three precincts. You point out that in other counties precincts have been combined as a matter of convenience and have so operated for years.

The only statutory provision we would find pertinent to the situation is the part of section 16-0901 of the 1957 Supplement to the North Dakota Revised Code of 1943, providing that: "The board of county commissioners may divide the county into precincts and establish the boundaries of the same except where, pursuant to the provisions of the title Municipal Government, wards and precincts have been legally established \* \* \* ." We find precisely the same provision in the North Dakota Revised Code of 1943. Looking to the source of the 1943 code provision, we find section 950-a2 of the 1925 Supplement to the Compiled Laws of 1913, which provides insofar as here applicable: "The board of county commissioners of each county in the state shall at its first session after the taking effect of this act, divide its county into voting districts, and establish the boundaries of the same. \* \* \* ." The condition of the original act has been fulfilled. The first meeting of the board of county commissioners of each county of the state after the effective date of the act has been held.

In checking the code revisor's notes to section 16-0901 of the North Dakota Revised Code of 1943, we note that several provisions of section 950-a2 of the 1925 Supplement to the Compiled Laws of 1913 were deleted as obsolete. We note further the revisor's expression of purpose that: " \* \* \* The phrase 'except where, pursuant to the provisions of the title Municipal Government, wards and precincts legally have been established' to prevent a conflict in the provisions of the two titles. \* \* \* "

From the above it would appear to us that the code revisors did intend by the previously quoted portion of section 16-0901 to provide that the board of county commissioners may divide the county into precincts and establish the boundaries of the same, the exception thereto referring only to instances where wards and precincts have been legally established, pursuant to the provisions of the title Municipal Government, not to instances where precincts have been

established by the board of county commissioners.

The only decision of our Supreme Court relating to this precise type of question that would appear to be on the basis of a similar set of facts is *Fuerst v. Semmler*, 28 N.D. 411, 149 N.W. 115. (See also: *State v. Nichols*, 39 N.D. 4, 166 N.W. 813). This case was decided, of course, prior to the revisions of the statutory provisions by the code commission. The court in that case indicates that though the procedure therein is irregular and was not contemplated by the Legislature, in the absence of fraud or bad faith affecting the result, the election should not be held to be a nullity. We find no decision of the Supreme Court that would be as clearly in point subsequent to the code commissioners revision, however, we believe, at the least, the same conclusion would be reached under the present statute. Further, it is questionable that under the present revision of the statute such a procedure would be held to be irregular.

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