

**OPINION
60-184**

January 28, 1960 (OPINION)

MUNICIPAL GOVERNMENT

RE: Governing Body - Change of Ward Boundaries - Aldermen

This is in reply to your question whether an alderman who was duly elected can continue to hold such office until his successor is duly elected and qualified after a change in boundaries was accomplished placing him in another ward, or whether such would declare the office vacant immediately upon the establishment of new boundaries.

The section of law which is involved is 40-0805 of the 1957 Supplement, which as material to the question is:

No person shall be eligible to the office of alderman if he:

1. Is not a qualified elector of and resident within the ward for which he was elected, except that in cities where aldermen are elected at large, he shall be a qualified elector of and a resident within the city;"

North Dakota has had no ruling on this question and therefore we must resort to other authorities to resolve it. The authorities in other states re not fully in accord. The case of Ross v. Barber 49 N.W. 35, the court held that such change declared the office vacant. The decision here was per curiam and apparently was based on another Michigan case reported in 44 N.W. 1047. This case is not too helpful for the reason that the matter was resolved on a statute which was more specific as to the effect the changing of boundaries will have on aldermen.

The same holds true on the case reported in 50 N.W. 660. In this case there was also a statute specifically providing when an office shall be deemed vacant. Thus the leading cases holding that the office was vacated by changing the boundary lines are Michigan cases, but because of peculiar statutes the holdings therein cannot be applied to our question.

The leading case on the question at hand is the case of Olsen v. Merrill 5 Pac. 226. In this case the court took into consideration the views expressed by other jurisdictions holding that the change of boundaries vacates the office. However, in checking the case cited it is found that the change did not merely affect a change of wards within the city but pertains to changes detaching or creating complete new districts or a complete new manner of electing officers in the newly created area or district. The court in this case said, "The duties of the members of the board of education of Provo City are in no sense confined to the municipal wards from which they were elected."

Under the council alderman form of government the same holds true. The aldermen are not restricted or confined to the ward from which they are elected. The court held that the members of the board of education were entitled to serve as members for the remainder of the term, notwithstanding ordinances redistricting city placed them outside boundaries of municipal wards from which they were elected. The statute in question there provides:

Every member of the board of education . . . shall be and remain a resident, qualified, registered voter in the municipal ward from which he is elected, . . ."

The statute in question there is to a great extent similar to the statute in North Dakota.

A similar conclusion was reached in *Norwood v. Holden*, 47 N.W. 971 Minn. The statute in question there provided in part that the commissioner must at the time of his election be a resident of said district and shall reside therein during his continuance in office. The court there said that this clause had reference to an actual change of residence and not a change of district boundaries. The court went on to say that a division of their district is merely for election purposes and that the duties of the commissioner are not local or to be performed only in a particular part of the county. The court pointed out that they are members of an entire board which acts as such for an entire county. The court further said that the great weight of authority is in accord with the views which were expressed in *Norwood v. Holden* and that it was the opinion that such views were sound. See also *State ex rel. O'Connell v. Nelson*, 34 Pac. 562, where the court reached a similar conclusion as to road overseer in a county.

The rule of law seems to be firmly established that where an officer voluntarily moves from a ward he vacates his office, and as such a vacancy exists. However, in the matter before us we have a different situation. In our case the change was not made voluntarily by the officer concerned but was the result of changing the boundary lines. Because of the similarity in the statutes construed by the courts in the above mentioned cases and the North Dakota statute, even though there is authority to the contrary, we are compelled to follow the views of the great weight of authority.

It is therefore our opinion that an alderman who was duly elected, but because of the change in boundaries of the ward no longer resided within the ward from which he was elected but is still within the city limits, can continue in office until a successor is duly elected for such ward.

LESLIE R. BURGUM
Attorney General