

**OPINION  
60-98**

October 21, 1960 (OPINION)

ELECTIONS

RE: Polling Places in Cities - Designation by County Commissioners

This is in reply to your letter of October 18, 1960, concerning chapter 16-09 of the North Dakota Revised Code of 1943, as amended.

You point out that section 16-0904 of the North Dakota Revised Code of 1943 indicates that the governing body of the village or city may designate polling places. You also state that the county commissioners changed the polling place of one location in the City of Carrington approximately one month ago. Thereafter the City Council of Carrington designated a different location as the polling place for the general election.

You ask the following question:

Does the City Council have any authority to designate a polling place in a primary or general election? What effect does the Resolution passed by the City Council have on the location of the polling place as changed by the County Commissioners?"

We note that section 16-0904 of the North Dakota Revised Code of 1943 provides:

GOVERNING BODY OF MUNICIPALITY OR TOWNSHIP AND IPECTOR OF ELECTIONS MAY DESIGNATE VOTING PLACE. If the designated voting place in a precinct within a township is removed, destroyed, or is unavailable for any cause, between the date when any meeting of the board of county commissioners is held and the date of any election the board of supervisors of such township shall designate by a resolution and record in its official records a voting place at which the election shall behold. In unorganized territory, such voting place shall be designated by the inspector of elections. Such voting place as may be designated shall continue to be the voting place of such precinct until the next meeting of the board of county commissioners, when such board shall designate a voting place. In villages and cities, the polling place may be designated by a resolution of the governing body."

The last sentence of the above quoted section is the one to which you had reference in your letter.

It is our opinion that this section, including the last sentence, applies only to those situations in which the designated voting place in a precinct within a township, unorganized territory, or city or village is destroyed or is unavailable for any cause between the date when any meeting of the board of county commissioners is held and the date of any election. In such instance the city council may designate a voting place and the place so designated shall continue until the next meeting of the county commissioners. It is our further opinion that this is the only instance in which a city council may designate a voting place for a primary or general election.

Our opinion is based on the history of the statutes providing for the designation of voting places. Thus in chapter 147 of the 1915 Session Laws in which this section (16-0904) first appeared, we find the following language.

Such Board of Commissioners shall designate one voting place in each precinct, provided, however, in case such voting place so designated becomes removed, destroyed or unavailable for any cause between the date when any regular or special meeting of the Board of County Commissioners is held and the date of a general election it shall be the duty of the board of supervisors to hold a meeting and designate by resolution and record on the township clerk's minute book a voting place at which such election shall be held, which voting place so designated shall continue to be the voting place of such precinct until the next meeting of the Board of County Commissioners, when said Board of County Commissioners shall designate a voting place as herein provided; provided, further, when a voting place designated by the Board of County Commissioners becoming removed, destroyed or unavailable is located within the limits of an incorporated town, village or city, such designation of a voting place shall be made by the board of trustees of town or village or by the City Council in case of a city, instead of the board of supervisors, and a record shall be made thereof in the record books of such municipality. Provided, further, that when a voting place designated by the Board of County Commissioners in a precinct composed of unorganized territory is removed, destroyed or unavailable, such designation of a voting place shall be made by the inspector of elections for said precinct. The voting place in the spector of elections for said precinct. The voting place in the town, village, city or unorganized precinct so designated shall be used as such until the Board of County Commissioners designate at its next succeeding meeting a voting place as herein provided. .  
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The portion of this section providing for the designation of a voting place in each precinct by the county commissioners was contained in previous acts. However, the portion referring to designation of a voting place in case the regular voting place was removed, destroyed or unavailable, appeared for the first time in 1915. This provision was amended by section 3 of chapter 33 of the 1918 Special Session Laws. The provision quoted above remained substantially the the same and the provision now found in section 16-0905 of the North Dakota Revised Code of 1943 was added. This addition provided:

The Board of County Commissioners shall have authority to change any voting place in any voting district at any regular or special meeting."

This provision is essentially the same as that presently found in section 16-0905.

The above provision remained substantially the same until the 1913 Compiled Laws and the supplements thereto were revised in 1943. In the Reviser's notes under section 16-0904 we find the following statement:

This section is a part only of S.L. 1919 Sp., c. 33, s. 3, revised for separate statement for clarity without change in meaning. This present section constituted an amendment of a previous section, but the material contained in this present section did not originate until S.L. 1915, c. 147, s. 1 was passed, so the previous sources were not included herein as they have no bearing on this present section." (Emphasis supplied)

The Reviser's Notes to section 16-0905 read as follows:

This present section is a part only of S.L. 1919 Sp., c. 33, s. 3, revised for separate statement and for clarity without change in meaning. S.L. 1919 sp., c. 33, s. 3, in effect, constitutes an amendment to previous sections, but because the statement of this present section first appeared in S.L. 1919 sp., c. 33, s. 3, the previous sources of this present section are omitted."

We believe it is obvious, upon considering the history of the statutes in question, that the board of county commissioners has the power to designate voting places for a primary or general election. The board of county commissioners was, at the time precincts were first established, given the power to designate the voting places. While such provision has been removed from the statutes due to the accomplishment of this provision, the power to change voting places remains with the county commissioners except in those instances set forth in section 16-0904.

We, therefore, conclude that the board of county commissioners has the power to designate polling places in primary and general elections and that the city council has no such power except in those instances outlined in section 16-0904. Since the city council has no authority to designate a polling place in a primary or general election, a resolution passed by them purporting to designate a polling place for a primary or general election is without any legal effect.

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