

**OPINION
61-50**

May 16, 1961 (OPINION)

COUNTIES

RE: County Justice - Change of Venue

Re: County Justice Act

This is in reply to your letter of May 4, 1961, concerning the above named topic.

You state that Ramsey County does not have increased jurisdiction. You then ask the following question: "In the event that this County Justice Office is allowed to go to the County Judge, will the defendants in our county lose their right to a change of venue in that there will not actually be a County Justice?"

The pertinent provisions in this instance would appear to be section 27-07-02 of the North Dakota Century Code which provides as follows:

JURISDICTION OF COUNTY COURTS. The county court of each county shall have exclusive original jurisdiction in probate and testamentary matters, including the appointment of administrators, and guardians, the settlement of the accounts of executors, administrators, and guardians, and the sale of lands by executors, administrators, and guardians, and it shall have such other probate jurisdiction as may be conferred by law. In a county not having a county court of increased jurisdiction, the jurisdiction and powers formerly vested in the justices of the peace are hereby conferred concurrently upon the county court, unless and until a county justice is appointed." (Emphasis supplied)

We also note that section 33-01.00.1 of the North Dakota Century Code, effective July 1, 1961, provides:

OFFICE OF JUSTICE OF THE PEACE ABOLISHED. The office of justice of the peace, as a separate office and as an office ex officio, is hereby abolished and the jurisdiction and powers thereof shall be conferred as provided in this title, and wherever justices of the peace, or the justice court is referred to in the laws of this state, the same shall mean the county justice and the county justice court, as the case may be." (Emphasis supplied)

While some particular courts may have inherent power to order a change of venue, ordinarily the power of a particular court to order a change of venue depends on the Act under which the court is organized, and on the applicability to it of general or special venue statutes. See 92 CJS 826, VENUES sections 127, 128, 129.

We note that section 33-0311 of the North Dakota Revised Code of 1943 made provisions for change of venue in civil actions in justice of

the peace courts. The office of justice of the peace will be abolished as of July 1, 1961, makes no provision for change of venue in civil actions from county courts. The provisions in the County Court Act for change of venue apply only to probate matters. See section 27-07-19 of the North Dakota Century Code.

The provisions for change of venue in criminal actions in justice of the peace courts are found in sections 33-1212, 33-1213 and 33-1214 of the North Dakota Century Code of 1943. Again, the office of justice of the peace will be abolished as of July 1, 1961. These sections as found in the North Dakota Century Code, effective July 1, 1961, make provision only for change of venue in county justice courts. No provision is made for change of venue from county court. As stated above, the provisions in the County Court Act for change of venue apply only to probate matters.

We also note that section 29-07-06 of the North Dakota Century Code, effective July 1, 1961, provides as follows:

CHANGE OF PLACE OF HEARING - PROCEDURE. Whenever a person accused of a public offense is brought before a police magistrate for examination, and, at any time before such examination is commenced, he files with such police magistrate his affidavit stating that by reason of the bias or prejudice of said police magistrate he believes he cannot have a fair or impartial examination before him, such police magistrate must transfer said action, and all the papers therein, including a certified copy of his docket entries, to a county justice for the same county. The state's attorney, or his assistant, in the same manner and for the same reasons as the defendant, may obtain a transfer of such action from the police magistrate before whom the action was commenced, or from the county justice to whom it has been transferred on the application of the state, in which event it shall be transferred to the next nearest county justice. The place of examination cannot be changed more than once by each party under this section."

Emphasis supplied

It is obvious from the above wording that a change of venue from a police magistrate's court, upon a preliminary examination, can be had only if there is a county justice in that county. If the office of county justice has not been created there is no provision made for change of venue.

It is, therefore our opinion, in view of the above statutes, that no statutory provision for change of venue is made in those counties in which the office of county justice has not been created. If the powers formerly held by the justices of the peace are vested in the county judge as a result of the failure to establish the office of county justice under the provisions of chapter 27-18 of the North Dakota Century Code, the statutory provisions for change of venue are not applicable.

LESLIE R. BURGUM

Attorney General