

N.D.A.G. Letter to Wold (Dec. 31, 1985)

December 31, 1985

Mr. James W. Wold
Griggs County State's Attorney
P. O. Box 541
Cooperstown, North Dakota 58425

Dear Mr. Wold:

Thank you for your letter of December 12, 1985, requesting an opinion as to several questions.

Your first question is whether an alderman who was elected from one ward but has now moved to a different ward may continue in office for the term for which he was elected for the original ward. This question was previously asked and answered by this office in 1977. We are enclosing a copy of a letter written on February 18, 1977, to Michael McIntee. As you will note from reading this letter, our conclusion in 1977 was that a vacancy occurs in the office of alderman when he or she moves from the ward for which he was elected to a different ward. I have reviewed the applicable statutes and find that this conclusion remains accurate as of this date.

Your second question concerns the procedure to be followed by a city council in eliminating the position of municipal judge. The office of municipal judge is indeed optional under the council form of government. N.D.C.C. § 40-14-01. The statutes do not indicate the precise manner in which the decision is to be made as to whether the office of municipal judge shall be provided for in a particular city. Furthermore, the statutes do not indicate the manner in which such an office should be eliminated.

In the absence of specific statutory guidance, we believe the city council may choose whatever method it so desires in establishing or eliminating the position of municipal judge. We see nothing wrong with a city council terminating the position of municipal judge by resolution of the city council. This procedure could also be performed by ordinance if it is so desired.

The only qualification to be added is that the current term of the person elected to the position of municipal judge may not be diminished by action taken by the city council.

Sincerely,

Nicholas J. Spaeth

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Enclosure