

N.D.A.G. Letter to Kubik (Feb. 17, 1987)

February 17, 1987

Mr. Joseph H. Kubik
Dunn County State's Attorney
26 East 3rd Street
P.O. Box 643
Dickinson, ND 58602-643

Dear Mr. Kubik:

Thank you for your letter of February 4, 1987, referring to my attention the dispute in Dunn County as to the appropriate appointing authority for the deputy clerk of county court in a county with a population of less than 6,000.

I have reviewed my earlier letter to you of December 5, 1986, wherein I concluded that the statutes appeared to provide the needed authority to appoint or dismiss a deputy clerk of a county clerk with the clerk of the county court who, in counties of less than 6,000, was also the clerk of the district court. After reviewing the statutes and especially considering the limited appointment to the county judge to appoint a clerk of county court in counties over 6,000 in population (N.D.C.C. § 27-07.1-09), I believe my earlier position is the correct one. I realize that Judge Beyer does not agree with this conclusion. However, my conclusion is not that of a formal opinion of this office as my opinions are not binding upon the judicial branch of government.

Quite frankly, I disagree with the various parties involved in this dispute insofar as they believe that an opinion from this office is the appropriate method by which the disputes should be resolved. We are discussing the internal operation of the judicial branch of government which in no way is affected by the Attorney General or the opinions of this office. Instead, Administrative Rule 2(11) provides that the presiding judges of each judicial district possess the appropriate supervisory authority over the administrative practices and procedures of all judges, clerks of court, and other officers or employers of the court pursuant to N.D.C.C. § 27-02-05.1(3)

In light of this administrative rule, it is my suggestion to all parties that the appropriate resolution of this dispute is through the presiding judge of the respective judicial district as opposed to any opinion from the Attorney General's office. The other questions enclosed with your letter as submitted by the various parties also involve questions as to procedures and practices within the county court. Again, I respectfully suggest that the answers to these questions lie with the presiding judge of the judicial district as opposed to this office and would urge the parties to submit their questions to the presiding judge. My suggestion has been reviewed by individuals in the State Court Administrator's Office and they have concurred.

I am sorry I cannot be of further assistance to you and the other parties in resolving this dispute. I realize and appreciate the sincerity with which the parties are discussing their positions and would like to be in a position to lend assistance in resolving the matter. However, I must respect the division of the branches of government and it is my conclusion that this is a matter to be resolved by the judicial branch pursuant to the rules that the judicial branch has enacted for this very purpose.

Sincerely,

Nicholas J. Spaeth

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