

N.D.A.G. Letter to Mehrer (Feb. 19, 1987)

February 19, 1987

Mr. Owen K. Mehrer
Stark County State's Attorney
Box 130
Dickinson ND 58601

Dear Mr. Mehrer:

Thank you for your letter of December 30, 1986, requesting an Attorney General's opinion on the issue of representation on a district health board.

The portions of N.D.C.C. § 23-14-04 which mandate specific representation on a district health board, and are applicable to all of the questions outlined in your letter, include the following:

23-14-04. DISTRICT BOARD OF HEALTH. A district health unit shall be organized by the appointment of a district board of health to consist of not less than five members, one of whom shall be a physician, one a dentist, one a business or professional person, one a farmer, and one additional person. . . .In no instance shall the board be either all male or all female. . . . Each county in the district shall have at least one representative on the district board of health and counties of over fifteen thousand population shall have an additional representative for each fifteen thousand population or fraction thereof. In district units of less than five counties, each county shall have at least one representative on the district board of health and the additional representatives selected to constitute the minimum five-member board shall be equitably apportioned among the counties on a population basis. In a city-county health district comprised of only one county and having a city or cities of fifteen thousand population or more, each city having a population of fifteen thousand or more shall have a representative on the district board of health for each fifteen thousand population or fraction thereof. . . .

Most of the mandatory requirements of N.D.C.C. § 23-14-04 are quite clear. However, if a district contains less than five counties, each county is required to have one representative, but additional representatives are to be equitably apportioned among the counties on a population basis. Thus, representation on a district health board may be directly affected by the populations of the counties served.

The county representation restriction could have bearing on the "professional member" appointees (physician, dentist, business or professional person, and one other person) to a health district board. Any health district must ensure that each county is represented on

the board, that any county with over fifteen thousand has additional representation, and that any of the "professional member" appointments are completed with consideration given to equitable apportionment among the counties on a population basis. This requirement could result in differing apportionment of health district members on various district health boards throughout the state.

Given the considerations listed above, the answers to the various questions are as follows:

1. It is our opinion that, if a member of a district health board who has been appointed in the "professional member" category is a resident of one of the counties in the district, that county may also have another representative on the board who serves as the "county representative," as long as mandatory requirements regarding district board representation of N.D.C.C. § 23-14-04 are met. For example, as long as every county in the district has at least one representative, a county with over fifteen thousand population may have both a "professional member" appointee and a "county representative" appointee serving on the district board.
2. It is our opinion that the five mandated "professional members" of a district health board (i.e., those members who are serving in an "at large" capacity) are not necessarily separate from the "county representative" category. As long as the mandatory requirements of N.D.C.C. § 23-14-04 are met, the required "professional members" of a district health board may be appointed at large that is, the professional members do not have to be appointed on the basis of their county residence. However, this "at large" discretion is restricted if the county representative requirement has not otherwise been met. For example, if any individual county does not have a representative on a district board through some other means, then one of the mandated professional members must be a resident of that county. If a county of over fifteen thousand has only one other member already appointed to the board, then one of the mandated professional members must be a resident of that county. In addition, even if all of the counties have at least one representative, the professional members may not all come from one county unless that county's population is such that equitable distribution would warrant such appointments.
3. It is our opinion that as long as the mandatory requirements of N.D.C.C. § 23-14-04 are met regarding health district membership, a person serving as a "county representative" on a district health board may also serve as a "professional member" of the board, but in certain instances as noted above, a "professional member" residing in an individual county may be appointed in addition to a "county

representative" already appointed to the board.

4. It is our opinion that if the mandatory membership requirements of a district health board listed in N.D.C.C. § 23-14-04 are met, a county of over fifteen thousand may have two members on a district health board in addition to any board members who are appointed in the "professional member" category. The primary concern regarding the appointment of a third member from any individual county is to ensure that the appointment does not violate equitable distribution of representation based on population in regard to the other counties. Thus, in the case of a district health board which has more than five members, a county of fifteen thousand may well have two members on a district health board in addition to any board members appointed in the "professional member" category.

The difficulty in answering your question is caused by the potential of any district health board consisting of five or more members. In summary, every county must be represented on a district health board. Any county of over fifteen thousand population shall have an additional representative for each additional fifteen thousand population or fraction thereof. Every district health board must have a physician, a dentist, a business or professional person, a farmer, and one other person as members. No district health board may be either all male or female. Any appointments made in addition to the requirements outlined in this paragraph must be equitably apportioned among the counties on a population basis.

Sincerely,

Nicholas J. Spaeth

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