

N.D.A.G. Letter to Rohrich (Nov. 2, 1987)

November 2, 1987

Mr. F. C. Rohrich
Emmons County State's Attorney
P.O. Box 657
Linton, ND 58552

Dear Mr. Rohrich:

Thank you for your letter of October 14, 1987, as to the residency requirements for commissioners elected by districts.

The essential question is whether the residency of the commissioner in question has changed. From your letter, you have apparently concluded that such a change has occurred. Assuming Emmons county chooses its county commissioners by district pursuant to N.D.C.C. § 11-11-02, its commissioners must have their legal residence in the district from which they are elected.

We would caution, however, that legal residency depends in part upon one's subjective intentions. N.D.C.C. § 54-01-26(7). A person may have two or more actual residences, as distinguished from his single legal residence. State v. Moodie, 258 N.W. 558, 565 (N.D. 1935). Furthermore, there is a legal presumption against a change of legal residence. N.D.C.C. § 31-11-03(40).

To assist you and other officials in resolving any questions as to the residency of the commissioner in question, we would refer you to the guidelines provided by the North Dakota Supreme Court in Dietz v. City of Medora, 333 N.W.2d 702 (N.D. 1983). In addition, we are enclosing a copy of a 1979 letter issued by this office as to an identical question posed to us.

We hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

dfm
Enclosure