

N.D.A.G. Letter to Wold (Dec. 9, 1987)

December 9, 1987

Mr. James W. Wold
Griggs County State's Attorney
Griggs County Courthouse
Cooperstown, ND 58425

Dear Mr. Wold:

Thank you for your letter of November 25, 1987, requesting clarification as to a 1987 amendment to N.D.C.C. § 11-10-02 which allows certain counties to separate the offices of register of deeds and clerk of district court.

Prior to 1987, the register of deeds was the ex officio clerk of the district court in counties having a population of 6,000 or less. The 1987 Legislative Assembly amended this law allowing -the county commissioners in such counties to adopt a resolution separating these offices so long as the resolution was adopted not less than 30 days before petitions for nomination to county offices may first be filed for the primary election. 1987 N.D. Sess. Laws ch. 142, § 1.

After reading your letter and upon learning further information as gathered by a staff attorney, I understand the situation in Griggs County to involve a person elected to the office of register of deeds/clerk of the district court in 1986. The term of office for this person is four years. After the 1987 legislation was adopted by the Legislative Assembly, the Griggs County Board of County Commissioners adopted a resolution separating the offices as required by N.D.C.C. § 11-10-02. Following the adoption of that resolution, the person who was acting as deputy register of deeds was assumed to be the district clerk of court while the person elected to the office of register of deeds/clerk of the district court handled only register of deeds matters. Since that time, the person handling the district clerk of court duties no longer continues in that position.

I do not believe that the resolution of the Griggs County Board of County Commissioners separating these offices takes effect until the next election following the completion of the current term of office of the incumbent. The language of the 1987 amendment to the statute requires the adoption of the resolution within a certain period of time before petitions may be filed for the primary election for county offices. In reviewing the legislative history, including the tapes of the hearings, as to the passage of the 1987 legislative amendment, it is obvious that the Legislature was under the impression that the separation of the offices of register of deeds and clerk of the district court would allow both offices to be filled by election process. Indeed, there was discussion whether the 30-day requirement provided enough time to potential candidates to decide whether to seek the nomination to the separated offices. There was some consideration given to extending the 30 days to 45 or 60 days. In the end, the Legislature retained the 30 days as contained in

the original bill. Hearings on S. 2359 Before the House Committee on Political Subdivisions, 50th Leg. (March 5, 1987); Hearings on S. 2359 Before the Senate Committee on Political Subdivisions, 50th Leg. (January 30, 1987).

From the facts as presented to me and given my conclusion as to the effective date of the resolution adopted pursuant to N.D.C.C. § 11-10-02, I do not believe that there is a vacancy in the position of Griggs County register of deeds/clerk of district court. The person elected to that position still serves in that position and will continue to do so until both offices are separated and filled by election at the general election of 1990. The fact that the person who was the deputy register of deeds/clerk of court no longer continues in that position simply means that the register of deeds/clerk of court may appoint a new deputy pursuant to N.D.C.C. § 11-10-11.

I hope this information is helpful in resolving this matter for you and the members of the Griggs County Board of County Commissioners.

Sincerely,

Nicholas J. Spaeth

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