

N.D.A.G. Letter to Selinger (May 16, 1990)

May 16, 1990

Mr. Bruce A. Selinger
Slope County State's Attorney
P.O. Box 1173
Dickinson, ND 58602

Dear Mr. Selinger:

Thank you for your April 17, 1990, letter concerning county judges.

Your first question is whether a multicounty agreement to share the services of a county judge may stipulate that the multicounty judge must be a resident of one of the counties to the agreement.

In 1981, the North Dakota Legislature enacted N.D.C.C. § 27-07.1-02 which allowed counties to agree to share the services of a single county judge. 1981 N.D. Sess. Laws ch. 319, § 3. The 1981 legislation did not discuss the multicounty judge's residency. This void was filled by 1982 N.D. Op. Att'y Gen. 111 when this office concluded that a candidate for judge of a county court in a county which had agreed to share the services of a county judge must be a resident of one of the counties to that agreement.

In 1983, the North Dakota Legislature enacted House Bill No. 1153. This bill amended N.D.C.C. § 27-07.1-02 to read as follows:

The candidate elected as judge of the county court in those counties which have agreed to share the services of a county judge is exempt from the requirement of section 11-10-04, but must be a resident of this state at the time of nomination.

In 1986, this office acknowledged this legislative enactment and concluded that a candidate for a multicounty county judge position "is only required to be a resident of the state at the time of his or her nomination." 1986 N.D. Op. Att'y Gen. 113, 114.

Based upon the enactment of House Bill No. 1153 in 1983, it is my opinion that at the time of nomination a candidate for a multicounty judge position need not be a resident of any of the counties and need only be a resident of the state. However, following a candidate's successful election to the position of multicounty judge, that person needs to satisfy the residency requirements of N.D.C.C. § 11-10-04. This latter statute states that every county officer must be a qualified elector of the county in which he is chosen or appointed. A multicounty judge is included within the list of county officers. N.D.C.C. § 11-10-02(6). The 1983 amendment to N.D.C.C. § 27-07.1-02 does not address applicability of

N.D.C.C. § 11-10-04 to a multicounty judge following the judge's assumption of office. Instead, the 1983 amendment refers only to that time when someone is nominated for the position of a multicounty judge.

Therefore, it is my opinion that the 1983 amendment exempting multicounty judges from the residency requirement of N.D.C.C. § 11-10-04 applies only at the time of election or nomination. The exemption does not apply at the time the person who is successfully elected to the position of multicounty judge assumes office. Upon assuming office, a multicounty judge must assume residency in one of the counties in which he or she serves. To the extent that 1986 N.D. Op. Att'y Gen. 113 reaches a contrary conclusion, that 1986 opinion is hereby overruled.

Your second question is whether a county judge may also serve as a municipal judge outside of his county, but within the same judicial district.

N.D.C.C. § 40-18-01(1) states that the offices of municipal judge and county judge may not be held by the same person "except pursuant to assignment to presiding judge of the judicial district." Earlier this year, I provided an informal response to Dickinson Municipal Judge Robert A. Keogh concerning this particular statutory provision. I have attached a copy of my letter to Judge Keogh for your review and consideration. Based upon the legislative history of this statutory language, I concluded that a county judge could not act as a municipal judge in any case except when a municipal case has been reassigned to a county judge pursuant to Administrative Rule 17. I believe my conclusion is correct and would refer you to that conclusion as my official position at this time.

Thank you for writing me concerning your questions. I hope my response will be helpful to you and to the Slope County officials.

Sincerely,

Nicholas J. Spaeth

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Enclosure