

N.D.A.G. Letter to Koenig (March 31, 1992)

March 31, 1992

Mayor Ted Koenig
City of Carson
P.O. Box 19
Carson, ND 58529

Dear Mayor Koenig:

Thank you for your December 30, 1991, letter regarding county redistricting. You indicate that in December 1981, the Grant County redistricting board held a public hearing and determined that the county would elect its county commissioners in accordance with N.D.C.C. § 11-07-03.1. Thus, all qualified electors of the county would vote on all of the county commissioner positions, but one county commissioner must reside in each district. The county commissioners have been elected in this manner until the present.

You also indicate that the county redistricting board did not meet and did not hold a hearing regarding county redistricting following the publication of the 1990 federal decennial census. You indicate that the chairman of the board of county commissioners decided not to call a meeting of the redistricting board upon the advice of the state's attorney. As a result, it appears that the county commissioners must be voted on at large without regard to commissioner districts. You indicate that you feel the county redistricting board should have met and held a hearing on the matter of county redistricting.

Given this background, you ask whether the county commissioners must be voted on at large without regard to commissioner districts or whether the county commissioners should continue to be voted on at large with a commissioner residing in each district.

N.D.C.C. ch. 11-07 provides a comprehensive system for the redistricting of counties for voting purposes. The redistricting board consists of the chairman of the board of county commissioners, the state's attorney, a citizen or member of the governing body of the city with the largest population, a township supervisor, and a citizen selected by representatives of each of the cities of the county, excluding the largest city. N.D.C.C. § 11-07-01.

The redistricting board must meet within three months following publication of the federal decennial census to

determine whether redistricting is required, i.e., whether any one district varies more than 10% from the average population per commissioner in the county. N.D.C.C. § 11-07-02. If redistricting is required, the chairman of the redistricting board must call a public hearing to review alternative plans for redistricting. Id. The redistricting must be done to ensure substantially equal population within each new district. N.D.C.C. § 11-07-03. The

redistricting must be completed and filed by the chairman of the redistricting board with the county auditor by April 1 of an even numbered year to be effective for that year's elections. Id.

If redistricting is required but not completed in this manner, all commissioner districts are abolished and commissioners must be elected at large "until a proper redistricting plan is filed as required by [N.D.C.C. ch. 11-07]." N.D.C.C. § 11-07-03. Thus, the abolishment of commissioner districts and the establishment of at large voting is intended as a temporary measure until compliance with the redistricting procedures of N.D.C.C. ch. 11-07 is achieved.

Based on the foregoing analysis of N.D.C.C. ch. 11-07, it is my opinion that because Grant County's redistricting board failed to act in accordance with N.D.C.C. ch. 11-07, all of the commissioner districts are abolished and the commissioners are elected at large. The commissioners will continue to be elected at large until a proper redistricting plan is filed with the county auditor in accordance with N.D.C.C. § 11-07-03.

If the redistricting board does not meet, it may be compelled to meet in one of two ways. First, N.D.C.C. § 11-07-03 provides that the board of county commissioners may direct the redistricting board to adopt the optional method of redistricting provided in N.D.C.C. § 11-07-03.1. Second, a writ of mandamus may compel the board to act. In order to determine the proper parties and requirements to bring a writ of mandamus, I suggest you consult your city attorney.

I trust this responds to your question.

Sincerely,

Nicholas J. Spaeth

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