

**OPINION
64-86**

February 17, 1964 (OPINION)

COUNTY JUDGE

RE: Term of Office

This is in reply to your letter of February 11, 1964, relative to the term of office of county judges. You note that Section 173 of the North Dakota Constitution provides four-year terms for certain specific county officers including the county judge. This provision was effective for these officials elected at the general election in 1962. Section 110 of the North Dakota Constitution provides for a county judge whose term of office is specified as two years.

You ask whether or not you should give notice to the county auditors of the State of North Dakota that the county judge is an officer to be nominated at the primary election to be held on June 30, 1964.

As you have noted in your letter, Section 173 of the North Dakota Constitution was amended in 1962 to provide four-year terms for certain specified county officers. The county judge is among these officers. The section, as amended, further provides:

This amendment shall be construed as applying to the officers elected at the general election in 1962. This amendment shall be self-executing, but legislation may be enacted to facilitate its operation."

The county judge was also one of the officers specified for two-year terms in Section 173 prior to its amendment in 1962.

Section 110 of the North Dakota Constitution provides that the county judge shall be elected for a term of two years. This section was adopted as a portion of the original North Dakota Constitution and has not been amended. There is obviously a conflict between Section 173 of the North Dakota Constitution and Section 110 thereof insofar as the term of the county judge is concerned.

In *State v. Sathre*, 113 N.W.2d. 679, decided by the North Dakota Supreme Court in 1962, a question of conflict between certain constitutional provisions was considered. In answering the question presented the court stated at pages 682 and 683 of the Report:

All of the sections upon which the petitioners rely have been a part of the Constitution for many years. Section 35, being a recent amendment, governs to the extent that it creates exceptions to the earlier prohibition by vesting the three officers named with the specific power and duty to act as members of a group that were directed to proceed with reapportionment under the circumstances and in the manner prescribed by Section 35. The applicable rule of law is stated in Cooley's Constitutional Limitations, Eighth Edition, Volume

One, page 129, as follows:

Upon the adoption of an amendment to a constitution, the amendment becomes a part thereof; as much so as if it had been originally incorporated in the constitution; and it is to be construed accordingly. If possible, it must be harmonized with all the other provisions of the constitution. If this cannot be done the amendment will prevail.'

Section 35 is the latest expression of the will of the people with respect to matters embraced therein and prevails over all preexisting inconsistent constitutional provisions."

Since Section 173 is the latest expression of the will of the people insofar as the term of the county judge is concerned, it must prevail over the inconsistent provision (Section 110) governing the term of county judge. Section 173 specifically provides that the term of the county judges elected at the general election in 1962 shall be four years. This term will not expire until 1967 and there will be no officers nominated for this office until the primary election in June, 1966. It is therefore our opinion that you should not give notice to the county auditors of the State of North Dakota that the county judge is an officer to be nominated at the primary election to be held on June 30, 1964.

HELGI JOHANNESON

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