

**OPINION
67-55**

October 27, 1967 (OPINION)

Mr. Vincent Laqua

State's Attorney

Wells County

RE: Counties - Sheriff - Eligibility for Office

This is in reply to your letter of date 25 October 1967 with regard to eligibility for appointment to the office of sheriff of your county. You indicate that your county commissioners will have to fill the vacancy in the office of sheriff due to resignation of the incumbent sheriff. They have a number of applicants who are residents of other counties.

You call our attention to the fact that section 44-02-04 of the 1967 Supplement to the North Dakota Century Code which provides for the filling of a vacancy does not set forth the qualifications, if any, that the applicant would need to fill the office.

Your question is stated as:

Could the Board of County Commissioners fill the vacancy created in the Sheriff's office by a resident of the State but who is from a different county?"

Section 11-10-04 of the North Dakota Century Code provides:

OFFICER MUST BE QUALIFIED ELECTOR - EXCEPTIONS. Except as otherwise specifically provided by the laws of this state, a county officer must be a qualified elector in the county in which he is chosen or appointed, and a county commissioner must be a qualified elector in the district from which he is chosen."

A sheriff is a county officer (see section 11-10-02 of the North Dakota Century Code). There is no provision of the laws of this state excepting the office of sheriff of the county whether elected or appointed to fill a vacancy from the operation of the above-quoted statutory provision. In specific answer to your question, your board of county commissioners cannot fill the vacancy created in the sheriff's office by a resident of the state but who is from a different county.

HELGI JOHANNESON

Attorney General