

**OPINION
69-130**

July 30, 1969 (OPINION)

Mr. John A. Alphson

State's Attorney

Grand Forks County

RE: Counties - Redistricting - Manner of Creating Districts

This is in response to your letter in which you state that the County Commissioners, pursuant to Chapter 11-07, as amended, of the North Dakota Century Code, have commenced redistricting within the county. You then call our attention to the provisions of Section 11-07-03 which, in part, states as follows:

"* * * In no event shall every district be formed in such a manner that the population of cities located within each district exceeds the population of the district area outside the cities. * * *."

You further state that you are uncertain as to whether this means that each district comprising urban and rural area must be equal in population or whether there could be a commissioner's district all within the city. You further advise that the population of the City of Grand Forks comprises approximately 71 percent of the population of the County. You also call attention to the provision of Section 11-07-03, which provides that in no event shall the commissioners' districts vary in population more than 10 percent. You then ask for an opinion on the following questions:

1. May the Redistricting Board establish districts wholly within a city in the county or must they maintain in each district an equal population of rural-to-urban population?
2. Must the Grand Forks Air Force Base population be included in the determination of district boundaries?"

A careful reading of Section 11-07-03 of the North Dakota Century Code compels the conclusion that the districts shall not vary more than 10 percent in population. We further find that the districts shall not be constituted in such a manner so that each district will have a greater number of city population than rural population. We do not find any language which would indicate that a district may not be composed of an area wholly and solely within the city limits. In fact, the requirements would indicate that in certain instances the only way the statutory requirements can be met would be by creating a district consisting wholly of an area within the city. This would mean that one or more districts may consist wholly of population of the city as distinguished from population of rural and areas outside of the city.

It is further observed that the districts shall be as regular and compact as is practicable and shall be substantially equal in

population as is possible.

In direct response to Question No. 1, it is our opinion that the redistricting board may establish districts wholly within the city consisting of only urban population of that city. It is our further opinion that the law does not require that each district be composed of city and rural population, but under no condition may every district have city population which outnumbers the rural population within the district. Depending upon the distribution of population, particularly where the greater percentage of the population of the county is in the city, it is impossible to create districts in such a manner so that each district will have part city and part rural population and still conform with the law.

As to Question No. 2, we are enclosing a copy of an opinion addressed to Representative Lynn W. Aas, Fifth District, Ward County, North Dakota, which answers this question. You will note that the opinion states it is the population including all of the people in the county, as distinguished from residents and voters which is used in redistricting.

As a matter of interest, the case of Kirkpatrick v. Preisler, 22 L.Ed.2d. 519, may be of interest. This case, in effect, states that no variance is permitted unless it can be justified.

HELGI JOHANNESON

Attorney General