

**OPINION  
72-219**

September 25, 1972            (OPINION)

Mr. William J. Kriedemann  
County Auditor  
Golden Valley County  
Beach, ND 58621

Dear Mr. Kriedemann:

This is in response to your letter in which you recite some of the procedures that took place in your county with reference to the redistricting and election of county commissioners.

Earlier, an effort had been made to file a redistricting plan, but upon review it was found to be inadequate and in a letter dated August 17, 1972, we informed that the redistricting plan could not be considered a valid plan and that the office of county commissioner was to be filled at an election at large.

As a result of this, write-in votes were cast for candidates and according to your letter, six candidates were nominated to be voted upon in the general election to fill the three commissioner posts. The elections in the primary were on an at large basis.

You now advise that a redistricting plan has been filed for the county since the primary election. The problem with which you are concerned is the manner in which the fall election should be conducted. You then ask the following questions:

1. Do the winners of the primary appear on the fall ballot, and will the fall election still be at large?
2. If the answer to the first question is in the negative, how would any of the candidates get their names on the ballot for the fall election?"

The foregoing provisions of Section 11-05-07 clearly spells out that failure to redistrict by December 31, 1971, all district offices are abolished and the commissioner posts or offices are to be filled by an election at large.

The election process to fill the offices of no-party ballot are initiated prior to the primary election in which individuals file petitions to have the names placed on the ballot. In the absence of placing names on the ballot by the petition route, write-in votes may also be used and if a candidate receives votes equal to the number of signatures required to have the name placed on the ballot, such candidate is deemed nominated for the general election. There appears to be no other method available to place the names on the ballot at the general election except by the primary election process.

Chapter 16-08 pertains to the no-party ballot and section 16-08-07 provides for the filling of a vacancy on a no-party ballot. However,

this section also defines what shall constitute a vacancy and in effect states that a vacancy shall be deemed to exist "when a candidate nominated at the primary election shall die, resign, or otherwise become unqualified to have his name printed on the ballot at the general election."

We are assuming that the new redistricting plan divides the county into districts. Consequently, no one was nominated for such districts because in the primary election the candidates were running on an at large basis.

The provisions of Section 11-07-05 strongly suggest that unless a redistricting plan is filed in sufficient time so as to permit the candidates to go through the primary election process, the election shall be on an at large basis until the next year in which a primary and a general election is held.

It would thus appear that the redistricting plan recently filed with the county auditor cannot begin to be implemented until the next set of elections which would be in 1974.

In reaching this conclusion, we are aware that it will delay for some time the implementation of the new plan. At the same time, we cannot disregard the amount of confusion that will result if an attempt is made to implement the new plan at this ensuing general election. It is conceivable that the electorate, because of the change between the primary and general election, would be thoroughly confused not only as to the candidates, but also as to the method by which commissioners are to be elected and would result in having a lesser participation by the electorate than if they were given an opportunity to be fully informed and vote at the next elections.

In arriving at this conclusion, we have taken into account that there is no method by which the names can be placed on the ballot. The election would have to be one the basis of write-in votes. Time is too short to adequately inform the electorate of the new commissioner districts and it could well result in many voters casting a vote for a person who would not be entitled to represent the district. All of these factors compel us to conclude that the new plan may not be implemented until the elections in 1974.

The federal courts in instances where reapportionment was not accomplished as required by law, have nevertheless delayed or withheld reapportionment if it interfered with the election process which was about to be undertaken or was in the process. This concept would apply here. The election process is already underway and we believe that any benefits of the new plan would not outweigh the confusion and frustration resulting from its implementation at this specific time.

Sincerely yours,

Helgi Johanneson

Attorney General