

Date Issued: October 8, 1981 (AGO 81-108)

Requested by: Herschel Lashkowitz, State Senator

- QUESTION PRESENTED -

Whether a petition to change from a city commission form of government to a city council form of government must include the proposed wards on the petition.

- ATTORNEY GENERAL'S OPINION -

It is the Attorney General's opinion that the wards to be established when changing from a commission system of government to the modern council form of government may not appear on the petition asking for the change, but rather are to be established by the present governing body by ordinance pursuant to Sections 40-21-09 and 40-52-04 of the North Dakota Century Code.

- ANALYSIS -

Section 40-04-08, N.D.C.C., sets forth the proceeding to change from or revert to the commission system of government. Section 40-04-08, N.D.C.C., states in part that "the proceeding to change or revert shall be initiated either by a resolution by the governing body or by a petition asking for such change signed by not less than 25 percent of the qualified electors of the city." (Emphasis supplied.)

Section 40-04-10, N.D.C.C., states in part that:

"When a petition to change from or revert to the commission form of government, together with the city auditor's certificate of sufficiency, is filed with the governing body of a city, or when a resolution to change or revert has been adopted, the governing body shall call a special election at which only the question of changing from or reverting to the commission system of government will be submitted." (Emphasis supplied.)

In analyzing these two sections, it is apparent that the wards to be established under the modern council form of government cannot be included in the petition for change from the commission form of government and cannot be considered at the special election.

Section 40-04-11, N.D.C.C., sets out the procedure to follow when the special election favors changing from the commission system of government. Section 40-04-11, N.D.C.C., states:

"If a majority of the votes cast at the election provided for in Section 40-04-10 favor the proposition submitted at such election, the officers elected at the next biennial election shall be those prescribed by the provisions of this title

relating to cities organized under the city council form of government. Upon the qualification of such officers, the city shall become a city under the council form of government."

If the electors at the special election favor the change to the council form of government, it is the duty of the governing body to then by ordinance determine the wards in the newly formed council city. Section 40-21-09, N.D.C.C. It must also be noted that the number and boundaries of wards and precincts in the city may be changed by ordinance adopted by the majority vote of the members of the governing body. Section 40-52-04, N.D.C.C., sets forth the regulations to be followed when changing the number and boundaries of the wards and precincts within a city.

- EFFECT -

It governs the actions of public officials until such time as the question presented is decided by the courts.

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