

Office of the Attorney General
State of North Dakota

Opinion No. 81-117

Date Issued: October 30, 1981

Requested by: Representative Earl Strinden

--QUESTION PRESENTED--

Whether Section 11-07-14 of the North Dakota Century Code requires that all county commissioners who were elected at large pursuant to section 11-07-03, N.D.C.C., in 1980 stand for election in 1982.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that all county commissioners who were elected at large pursuant to Section 11-07-03, N.D.C.C., in 1980 must stand for election in 1982 regardless of whether the county is districted pursuant to Section 11-07-03.

--ANALYSIS--

Section 11-11-02 of the North Dakota Century Code provides as follows:

'11-11-02. COMMISSIONER MUST BE RESIDENT OF DISTRICT --
EXCEPTIONS. -- Each county commissioner shall be chosen by the
qualified electors of the district of which he is a resident, except as otherwise
provided in Section 11-07-03 or 11-07-03.1.'

This section provides a general requirement that county commissioners be elected from districts. The exceptions involve those counties which failed to redistrict in the manner required by Chapter 11-07, N.D.C.C., and those which have redistricted in the alternative method provided by Section 11-07-03.1, N.D.C.C. It is my opinion that counties which have chosen to elect their commissioners at large pursuant to Section 11-07-06, N.D.C.C., are excepted from the general requirement of districts.

Chapter 11-07, N.D.C.C., generally provides for redistricting of county commissioner districts as required by the constitutional doctrine of 'one man-one vote' as enunciated by both state and federal courts. The chapter requires redistricting to be considered after each decennial census and provides for a redistricting board to consider the subject of redistricting. This office has previously stated in an opinion dated December 28, 1971, to Brian Keohane, Golden Valley States Attorney, that the duty of the redistricting

board to file a proper redistricting plan is a continuing duty which the board is not relieved from until such a plan is filed.

Section 11-07-04, N.D.C.C., provides as follows:

'11-07-04. COMMISSIONERS' TERMS OF OFFICE-- STAGGERED TERMS.--When redistricting is completed or if failure to redistrict requires at-large election of commissioners as provided in section 11-07-03, all commissioners then holding office shall continue in such office until the next general election. At the first general election following redistricting of the county or election of commissioners at large, if required, as provided in this chapter, all county commissioner offices shall be open for election. The newly elected commissioners shall be divided into two classes. If the county has been redistricted, those elected in commissioners' districts designated by even numbers shall constitute one class, and those elected in commissioners' districts designated by odd numbers shall constitute the other class. If election of commissioners at large is required, classes of such commissioners shall be determined by assigning a number to their respective offices according to the numerical total of the votes cast for them at the general election at which they were elected. The commissioners of one class elected in the first election held under the provisions of this chapter shall hold office for two years and those of the other class shall hold office four years. The determination of the two classes shall be by lot so that one-half of the commissioners, as nearly as practicable, may be elected biennially. The county judge shall perform the lot in the presence of all of the newly elected commissioners within thirty days after the date of the first general election following redistricting or election of commissioners at large, if required, and shall certify in writing the results of such lot to the county auditor within five days after its performance.'

In Attorney General's Opinion 81-87, issued August 13, 1981, this office held that Section 11-07-04, N.D.C.C., requires that all county commissioners, including those whose district boundaries are not changed by redistricting action, stand for election at the first general election following redistricting if redistricting is required by Section 11-07-02, N.D.C.C. Although that opinion applied only to counties which have redistricted following the 1970 census and which subsequently redistrict following the 1980 census, the reasoning applies equally to counties which failed to redistrict as required by Chapter 11-07, N.D.C.C., following the 1970 census and which similarly fail to redistrict following the 1980 census.

Although the redistricting board of a county which failed to redistrict after the 1970 census has a continuing duty to file a redistricting plan based on that census, after the 1980 federal decennial census a new redistricting board has a new duty to redistrict based on the later census. If the new redistricting board also fails to redistrict, Section 11-07-03, N.D.C.C., then requires that commissioners be elected at large.

Section 11-07-04, N.D.C.C., then plainly provides that all commissioners continue in office until the first general election following the date when redistricting is required to be completed. At that election 'all county commissioners' offices shall be open for election', and the newly elected county commissioners shall serve wither two or four year terms as provided in that section.

It is my opinion that Section 11-07-04, N.D.C.C., requires that all county commissioner seats will be open for election in 1982 except two classes of county commissioners. County commissioners who were elected to a four-year term in 1980 are permitted by Section 11-07-04, N.D.C.C., to serve out their terms only in the following classes of counties:

1. Those counties which redistricted following the 1970 federal decennial census, and which are not required by Section 11-07-02, N.D.C.C., to redistrict following the 1980 federal decennial census, because there is not a 10% variation in population between districts.
2. Those counties in which county commissioners are elected at large pursuant to an election held under Section 11-07-06, N.D.C.C.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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