

Office of the Attorney General
State of North Dakota

Opinion No. 81-129

Date Issued: December 7, 1981

Requested by: Lewis C. Jorgenson
Ramsey County State's Attorney

--QUESTION PRESENTED--

Whether appointments to county positions by the board of county commissioners are restricted by Section 11-10-25 of the North Dakota Century Code relating to nepotism.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that appointments to county positions by the board of county commissioners are not restricted by Section 11-10-25, N.D.C.C.

--ANALYSIS--

Section 11-10-25, N.D.C.C., states:

11-10-25. NEPOTISM BY COUNTY OFFICIALS RESTRICTED. No head of any executive or administrative department or agency, either elective or appointive, of any county in this state, may appoint his or her spouse, son, daughter, brother, or sister to any position under the control or direction of that official, unless the appointment has been previously approved by resolution of the board of county commissioners.

This statute applies to 'the head of any executive or administrative department or agency' of a county. A search of the sections of the Century Code relating to the powers and duties of the board of county commissioners reveals that this board is not a department or agency of the county, but has general supervisory control over the county officers and fiscal matters of the county.

The above-noted section of law requires the board of county commissioners to approve appointments, by department or agency heads, of persons described within this section. Any action taken by the board of county commissioners in appointing a person to a position would have to occur by majority vote of the board. 'In order to bind the county, there must be formal action on the part of the commissioners as a board.' *Rolette State Bank v. Rolette County*, 218 N.W. 637 (N.D. 1928). Therefore, there would actually be board approval of appointments by them.

Because county commissioners are not heads of departments or agencies and any binding action would be approved by the commission, the county commissioners are not restricted by Section 11-10-25, 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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Attorney General

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