

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 81-7

Date Issued: February 4, 1981

Requested by: Grant County Board of Commissioners

- QUESTION PRESENTED -

Whether a board of county commissioners has the authority to appoint an attorney outside of the county to serve as state's attorney following the resignation of the incumbent state's attorney.

ATTORNEY GENERAL'S OPINION -

It is my opinion that a board of county commissioners cannot appoint an attorney who is not a qualified elector of that county to act as that county's state's attorney. However, the state's attorney of an adjoining county may be so appointed for up to two years and until a successor is appointed and qualified.

- ANALYSIS -

Section 44-02-04 of the North Dakota Century Code states that the board of county commissioners has the authority, through the appointment process, to fill a vacancy which has occurred in the office of state's attorney. In filling this vacancy, however, the board of county commissioners must follow section 11-10-04, N.D.C.C.

11-10-04. OFFICER MUST BE QUALIFIED ELECTOR - EXCEPTIONS. Except as otherwise specifically provided by the laws of this state, a county officer must be a qualified elector in the county in which he is chosen or appointed, and a county commissioner must be a qualified elector in the district from which he is chosen. (Emphasis supplied).

An exception to section 11-10-04, N.D.C.C., is set forth in section 11-08-10, N.D.C.C.

11-08-10. BOARD MAY APPOINT OFFICERS OF ADJOINING COUNTY - TERM OF OFFICE - COMPENSATION. The board of county commissioners may appoint the sheriff, state's attorney, and county superintendent of schools, or any one or more of such officers, of an adjoining county to act as the sheriff, state's attorney, or county superintendent of schools of its county. Any officer of an adjoining county so appointed shall serve for a term of two years and until his successor is appointed and qualified. He shall be eligible to serve in such dual capacity and shall receive, in addition to his salary as an officer of the county of his residence, a sum not exceeding one-half of such salary, to be fixed by the

board of county commissioners. The additional salary shall be paid by the county in the same manner as other county officers are paid.

Therefore, under section 11-10-04, N.D.C.C., an attorney appointed by the board of county commissioners to fill the vacancy created by the resignation of the state's attorney must be a qualified elector of the county. Alternatively, the board of county commissioners can appoint the state's attorney of the adjoining county under section 11-08-10, 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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