

Date Issued: July 14, 1981 (AGO 81-76)

Requested by: John J. Fox,
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- QUESTION PRESENTED -

Whether section 54-40-09 of the North Dakota Century Code requires all seats remaining on the human service council, after eight seats are assigned to the eight counties in region eight, to be filled by Stark County residents.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the population distribution in region eight is such that any seats on the human service council remaining vacant after eight seats have been assigned, one to each county in region eight, should be filled by Stark County residents.

- ANALYSIS -

The number of members who may serve on the regional human service council, not to exceed thirteen, is determined by the boards of county commissioners in the region. The selection of members to the council is governed by two special provisions: First, the members "are to be selected on the basis of population from residents of the counties in the region"; and second, "Each county in the region must have at least one member on the human service council."

Disparities in the distribution of population among the several counties within the designated planning regions served by human service centers, coupled with the statutory maximum membership of thirteen, make it mathematically impossible to achieve precise representation on the basis of population. For example, in the Dickinson region, population distribution varies from a low of 1,138 in Billings County, to a high of 23,697 in Stark County. Although a districting plan may afford the greatest precision in this regard, this does not appear to have been contemplated by the Legislature in light of the insertion of the words "of the counties" within the first special provision.

Strict adherence with the second special provision requiring that each county have at least one member on the human service council is possible. Adherence to this requirement, however, will result in further imprecision with respect to affording representation on the basis of county populations.

Because strict adherence to either of the two special provisions results in the derogation of the other, an irreconcilable conflict exists. If the conflicts are truly irreconcilable, section 1-02-08, N.D.C.C., requires that the clause last in position in the statute must prevail. In this statute, the requirement that each county have at least one member on the human service council prevails since it is last in position. Thereafter, in accordance with section

1-02-07, N.D.C.C., effort must be made to construe the conflicting provisions in such a manner as to harmonize them and give each its fullest effect.

Applying this analysis to the question raised, the boards of county commissioners within the region must first see that each county within the region is represented on the council. Any additional members to the council should then be selected in a manner which most closely approximates giving each county representation on the basis of its population, taking into account the population already represented by virtue of the mandatory one-member per county requirement. Based upon the population distribution in the Dickinson region, with Stark County having fifty-three percent of the regional population, it would appear that any additional council members should be allocated to Stark County.

- 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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