

Overruled in part by N.D.A.G. 88-22.

Office of the Attorney General
State of North Dakota

Opinion No. 81-97

Date Issued: September 8, 1981

Requested by: Marshall T. Bergerud
Dunn County States Attorney

--QUESTION PRESENTED--

Whether the provisions of Sections 11-04-04 through 11-04-12 of the North Dakota Century Code, relating to petitions, notice and the votes required, apply to elections to remove a county seat which is not located on a railroad or interstate river.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the provisions of Sections 11-04-04 through 11-04-12, N.D.C.C., relating to petitions, notice and the votes required, apply to elections to remove a county seat which is not located on a railroad or interstate river pursuant to Section 11-04-12.

--ANALYSIS--

Section 11-04-12 reads, in pertinent part, as follows:

'In counties where the county seat is not located on a railroad or interstate river, the question of county seat removal may be voted on at any primary election. The provisions of Section 11-04-02 and 11-04-03 shall be applicable to proceedings under this section.'

Section 11-04-12 refers to the removal of a county seat while Sections 11-04-02 and 11-04-03 refer to the permanent location of a county seat which has been temporarily located by the governor or board of county commissioners. Since the two processes conflict in the requirements for the number of petitioners and affirmative votes, the section is unclear in its meaning, and it is appropriate to review the legislative history.

Section 3239 of the 1925 Supplement to the Compiled Laws of 1913 reads as follows:

§ 3239. When an election has been held and at least two-thirds of the votes cast at such election are not cast for some other place than that fixed by law as the former county seat, no second election for the removal thereof must be held for four years thereafter, provided, however, that in counties where the county seat is not located on a railroad or interstate river, the question of county seat removal may be voted on at any primary election and if more than two towns are contending for the location of the county seat at such election, then the two towns receiving the highest vote at such primary election and these two towns only shall be placed on the official ballot at the first following general election, and the town then receiving the highest number of votes cast for the county seat location at such general election shall be designated the county seat of such county, and the county seat located thereat, and the question of county seat removal must not again be voted on for four years in any county where the county seat is so located.

The provisions as to petition, notice, ballot, etc., provided by law for election for the removal of county seats shall be applicable to the primary election therein provided for, as well as the general elections.'

In preparing the Revised Code of 1943, the first sentence of C.L. 1913, Section 3239 was codified as Section 11-0411 (now Section 11-04-11, N.D.C.C.), while the remainder of the section was codified as that portion of Section 11-0412 (now Section 11-04-12, N.D.C.C.) quoted above. Referring to this section, the code revisors report to the 28th Legislative Assembly provides:

'This section is a part only of the 1925 Supplement, Section 3239, revised for clarity and brevity without change in meaning.'

Thus the legislative intent of the present version of Section 11-04-12, N.D.C.C., is that it have the same substantive provisions as its immediate predecessor, Section 3239 of the 1925 Supplement to the Compiled Laws of 1913.

In *Bugbee v. Steele County*, 170 N.W. 321 (1918), the North Dakota Supreme Court interpreted the provisions referred to in the last sentence of C.L. 1913, Section 3239, to be C.L. 1913, Sections 3233 to 3239. Those sections were the predecessors of Sections 11-04-04 through 11-04-12, N.D.C.C. The court found that C.L. 1913, Section 3239 required that the petition be signed and verified by threefifths of the voters of the county and that any change be approved by a two-thirds vote.

It is, therefore, my opinion that an election to remove a county seat which is not located on a railroad or interstate river may be voted on at any primary election, but the petition for removal must be signed and verified by at least 60% of the qualified electors of the county pursuant to Section 11-04-04 and 11-04-05, N.D.C.C., and the removal must be voted for by least twothirds of all legal votes cast at the election pursuant to Section 11-04-08, N.D.C.C. If the petition for removal contains alternative selections for the future county

seat, and the total vote cast for all alternatives is greater than two-thirds at a primary election, the two towns receiving the most votes would then be placed on the general election ballot.

--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.

Robert O. Wefald
Attorney General

Prepared by: John W. Morrison
Assistant Attorney General