

LETTER OPINION
93-L-28

February 4, 1993

F.C. Rohrich
107 North Broadway
P.O. Box 657
Linton, ND 58552-0657

Dear Mr. Rohrich:

Thank you for your January 12, 1993 letter asking whether the city of Linton may properly limit voting at its special election regarding a proposed home rule charter to one voting place when the city has three wards.

N.D.C.C. ? 40-05.1-10 addresses the manner of calling and holding elections regarding a city's adoption of a home rule charter. It provides that the elections "shall be called and held in the same manner as is provided for the calling and holding of city elections except that all qualified voters of the city shall be eligible to vote at such elections and the form of ballot shall be prescribed by the charter commission so that the voter may signify whether he is for or against the proposed home rule charter or the amendment or repeal, as the case may be." Thus, whether a special election regarding adoption of a home rule charter can be held at a single location must be determined based upon general municipal election law.

In Kerlin v. City of Devils Lake, 141 N.W. 756 (N.D. 1913), the North Dakota Supreme Court addressed whether a city was required to provide a voting place in each ward. The court held that "[t]here can be no question but what under the plain statute it was the duty of the city authorities to provide for and have conducted a polling place at some place within each ward to comply with the statute quoted." Id. at 757.

Relying on Kerlin, Attorney General Helgi Johanneson determined in 1970 that the North Dakota statutes "indicate the intent of the Legislature that the voting places bewithin the precinct unless by specific provision they may be located outside of the precinct." Letter from Attorney General Helgi Johanneson to City Attorney Glenn Dill (Oct. 29, 1970). General Johanneson explained that "the fact the statute does not specifically require the voting place to be within the precinct would appear immaterial since we believe the statutes assume the

voting place will be within the precinct unless the contrary is specifically expressed in the statute. We are not aware of any statute which would authorize the city to establish a voting place outside of the precinct unless the wards are combined for voting purposes as provided by ? 40-21-09." Id.

As a result of Attorney General Johanneson's opinion, the Legislature amended N.D.C.C. ? 40-21-09 in 1971 to provide that "[n]othing herein shall be construed as prohibiting the use of one building as the election polling place for more than one ward or the installation of voting machines from separate wards therein." 1971 Sess. Laws ch. 399, ? 1452. Representative Weber testified that the purpose of the bill is to allow cities with more than one ward to hold elections in a central location with separate voting machines and separate election boards for each ward. Hearing on H.B. 1452 Before the Senate Judiciary Comm., 42nd N.D. Leg. (March 1, 1971) (Statement of Rep. Weber).

The above quoted language was changed in 1991 by Senate Bill No. 2295. 1991 Sess. Laws ch. 440, ? 19. Although the wording has been slightly changed, N.D.C.C. ? 40-21-09 still specifically provides that a city with more than one ward may hold elections in a central location. It is my opinion that the last sentence of N.D.C.C. ? 40-21-09 permits the city of Linton to use Linton Public School as the central voting place for all of its wards.

I trust I have responded to your question.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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cc: Secretary of State

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