LETTER OPINION
2000-L-128

July 14, 2000

Honorable Pam Gulleson
State Representative
PO Box 215
Rutland, ND 58067-0215

Dear Representative Gulleson:

Thank you for your letter inquiring about the effect of the 1999
amendments to N.D.C.C. § 11-10-02 which take effect on January 1, 2003,
for counties with 6,000 people or less which have adopted a resolution
separating the offices of register of deeds and clerk of district court.

The current version of N.D.C.C. § 11-10-02, which is effective through
December 31, 2002, provides, in part:

> In counties having a population of six thousand or less, the
> register of deeds also serves as ex officio clerk of the
> district court, unless the board of county commissioners
> adopts a resolution separating the offices no less than
> thirty days before petitions for nomination to county offices
> may first be filed for the primary election.

Moreover, the current version of the statute also provides that among
required county offices, the county must have "one clerk of the district
court, except as otherwise provided by this section." Id. The version
of N.D.C.C. § 11-10-02 which is effective January 1, 2003, removes the
reference to the clerk of district court as a required elective position
and also removes the language authorizing a board of county
commissioners in counties having a population of 6,000 or less to
separate the office of clerk of district court and register of deeds.[1]
Because of these changes, you ask whether clerk of district court and
register of deeds offices that were lawfully separated prior to the

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[1] Actually, N.D.C.C. § 11-10-02 was amended three times by the 1999
Legislative Assembly; however, the key amendments in question were
contained in 1999 N.D. Sess. Laws ch. 278, § 7.

effective date of the January 1, 2003, amendments to N.D.C.C. § 11-10-02
remain separated[2] on and after that date.

As I noted in a recent letter dealing with the 1997 amendments to this
statute:

> In construing statutes, the primary goal is to discover the
> intent of the Legislature. Courts look first to the language
> of the statute in seeking to find legislative intent and if
> the statute's language is clear and unambiguous, the
> legislative intent is presumed clear on the face of the
> statute. Northern X-ray Company, Inc. v. State, 542 N.W.2d
> 733, 735 (N.D. 1996). The fact that the Legislature amends
> an existing statute is a clear indication that the
> Legislature intended to change the law. State Bank of Towner
> v. Edwards, 484 N.W.2d 281, 282 (N.D. 1992); Walker v.
> Weilenman, 143 N.W.2d 689, 694 (N.D. 1966).

1998 N.D. Op. Att'y Gen. L-5, L-6 (Jan. 8 to Jerry Renner).

The history of the separation of these offices in smaller counties was
discussed in a letter from Attorney General Nicholas Spaeth to James
Wold (Dec. 9, 1987) which explained:

> Prior to 1987, the register of deeds was the ex officio clerk
> of the district court in counties having a population of
> 6,000 or less. The 1987 Legislative Assembly amended this
> law allowing the county commissioners in such counties to
> adopt a resolution separating these offices so long as the
> resolution was adopted not less than 30 days before petitions
> for nomination to county offices may first be filed for the
> primary election.

The letter went on to state:

> [I]t is obvious that the Legislature was under the impression
> that the separation of the offices of register of deeds and
> clerk of the district court would allow both offices to be
> filled by election process.

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[2] "N.D.C.C. § 11-10-02 does not define the term 'separate.' It must be
understood, therefore, in its ordinary sense. N.D.C.C. § 1-02-02. As
ordinarily understood, the term 'separate' means '[t]o set or keep
apart; disunite;' '[t]o become disconnected or severed; come apart;'
'[e]xisting as an entity; independent;' '[n]ot shared.'" 1998 N.D. Op.
Att'y Gen. O-51, O-52 (Apr. 24 to Keithe Nelson).

Consequently, if properly separated, counties having a population of 6,000 or less could have a separately elected clerk of district court and register of deeds, at least until January 1, 2003, when the new version of N.D.C.C. § 11-10-02 goes into effect. Thus, it is necessary to determine whether the Legislature intended that properly separated elective clerk of district court and register of deeds positions would continue to exist on and after January 1, 2003. On the one hand, it could be argued that if the positions were properly separated under then existing law, the positions should continue as separately elected positions. On the other hand, by eliminating references to an elective county office of clerk of district court in two places in the January 1, 2003, version of N.D.C.C. § 11-10-02, coupled with the elimination of the language permitting separation of the offices, it could also be argued that the Legislature intended to eliminate all elected clerks of district court on and after January 1, 2003, including those in smaller counties.

As noted above, the fact that the Legislature amends an existing statute is a clear indication that the Legislature intends a change in the law. By eliminating the reference to an elected clerk of district court, as well as eliminating the authority to separate the offices of clerk of district court and register of deeds in smaller counties, there is a strong argument that the Legislature intended to eliminate all elected clerks of district court, except in some circumstances not pertinent here.[3]

Further support for the proposition that the Legislature intended to eliminate elected clerks of district court can also be found in other parts of chapter 278 of the 1999 Session Laws (House Bill 1275). See, e.g., N.D.C.C. § 27-05.2-07 (version of statute effective between January 1, 2000, and December 31, 2002, refers to an elected clerk of district court, while the January 1, 2003, version eliminates the reference to an elected clerk of district court). There is also some support for this position in the legislative history for House Bill 1275 which contained the foregoing legislative changes. In a written summary of House Bill 1275 presented by a representative of the North Dakota Supreme Court, it was noted:

> After January 1, 2003 (the date after which the office of
> elected clerk of court would no longer exist), a county

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[3] Even the January 1, 2003, version of N.D.C.C. § 11-10-02 makes an exception for counties that have adopted one of the optional forms of county government or combined or separated the functions of county offices or redesignated offices as elective or appointive pursuant to the "tool chest" provisions contained in N.D.C.C. chs. 11-10.2 or 11-10.3.

employee designated to provide clerk services would serve as ex officio clerk of district court.

. . . .

Section 7 amends section 11-10-02 again, effective January 1, 2003, to remove the clerk of district court as a [sic] elected county official.

Hearing on H.B. 1275 Before the House Judiciary Comm. 1999 N.D. Leg. (Written Summary of House Bill No. 1275 by Jim Ganje, pp. 1, 3).

Both the 2003 amendments to N.D.C.C. § 11-10-02 and the legislative history references indicate that the Legislature intended to eliminate the clerk of district court as an elected position and, in the case of the amendments, to eliminate the authority of smaller counties to separate the clerk of court and register of deeds positions. Because the separation process in smaller counties involves the creation of an elective clerk of district court, once the authority to have an elected clerk of district court and to separate the offices is eliminated, so also is the authority for a separate elected clerk of court position. Consequently, it is my opinion that on and after January 1, 2003, counties with populations of 6,000 or less that have previously separated the elective positions of clerk of district court and register of deeds will, by operation of law, no longer have a separate elected clerk of district court.

Sincerely,

Heidi Heitkamp
Attorney General

jjf/vkk