

LETTER OPINION
2001-L-23

July 6, 2001

Mr. Stuart A. Larson
Grandin City Attorney
PO Box 847
Hillsboro, ND 58045-0847

Dear Mr. Larson:

Thank you for your letter asking about the authority of a county to move the site of a voting place for a joint city/county election outside the city limits. In a telephone conversation with a member of my staff, you provided some additional information. A number of cities, including the city of Grandin, have entered into an agreement with Cass County to hold joint elections under the authority of N.D.C.C. § 40-21-02. You indicated that even though there are suitable and accessible voting places within the city of Grandin, Cass County established a voting place five miles outside the city limits. You question the authority of a county to do so. You also provided a copy of the agreement. The agreement provides in section 3(e) that the "County shall be responsible for establishing and managing the polling locations for the joint elections" The agreement recites that the agreement is authorized by N.D.C.C. chs. 54-40 (joint powers) and 40-21 (municipal elections) and N.D. Const. art. VII, § 10.¹

Section 2 of N.D.C.C. ch. 40-21, provides, in part, that a "governing body of a city shall enter into an agreement with the governing body of the county or counties in which the city

¹ This constitutional provision states:

Agreements, including those for cooperative or joint administration of any powers or functions, may be made by any political subdivision with any other political subdivision, with the state, or with the United States, unless otherwise provided by law or home rule charter. A political subdivision may by mutual agreement transfer to the county in which it is located any of its powers or functions as provided by law or home rule charter, and may in like manner revoke the transfer.

lies concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, the publishing of legal notices, and the apportioning of election expenses.” The requirements of this statute are mandatory, except for certain home rule cities. 1994 N.D. Op. Att’y Gen. F-09 at p. F-39; 1994 N.D. Op. Att’y Gen. L-150 (copies enclosed).

Section 2 of N.D.C.C. ch. 16.1-04 provides:

The board of county commissioners of each county:

1. Shall designate a voting place for each precinct and may alter the voting places when there is a good and sufficient reason. However, the voting places for precincts located within the boundaries of any incorporated city must be designated, and altered if required, by the governing body of the city.
2. Shall provide that all voting places are accessible to the elderly and the physically disabled.

Although normally voting places are required to be located within a particular voting precinct, there are instances where a polling place may be located outside of a precinct or even outside of a particular political subdivision when doing so will enhance the elective franchise and if there is “good and sufficient reason.” Letter from Attorney General Nicholas Spaeth to Jim Kusler (June 16, 1992) (“[A] polling place may be located outside of a precinct if it provides an enhancement to the elective franchise by increasing accessibility and ease of voting for purposes of implementing state and federal laws, as well as providing a central voting place for all voters. . . . This opinion is supported by N.D.C.C. § 16.1-04-02(1) which allows the city or county, as the case may be, to alter the precinct voting places for ‘good and sufficient reason.’” (copy enclosed)); see also 1997 N.D. Op. Att’y Gen. L-146 (voting site may be located outside of boundaries of a small city under certain circumstances in order to provide a handicap accessible voting place).

Thus, while it is possible under certain circumstances for a polling place to be located outside the boundaries of a city, “the voting places for precincts located within the boundaries of any incorporated city must be designated, and altered if required, by the governing body of the city.” N.D.C.C. § 16.1-04-02(1); Letter from Attorney General Nicholas Spaeth to Jim Kusler (June 16, 1992) (“It is necessary that the polling place be designated by the proper political subdivision [for a polling place outside political subdivision’s precinct].”).

Accordingly, a prior opinion from this office stated that in negotiating a mandatory election agreement between a city and a county, a county may not unilaterally require that a lone city precinct be combined with rural townships to form one election precinct. 1994 N.D. Op. Att'y Gen. L-150. The letter noted that while a county could not lawfully compel a city to accept jurisdiction of rural townships to establish a single voting precinct, a city could agree to do so as part of a joint election agreement under N.D.C.C. § 40-21-03. Id.²

According to the terms of the joint election agreement between the city of Grandin and Cass County, the parties agreed that the polling place location would be established by the county. Thus, the county did not exceed its contractual authority because the city agreed that the county could establish a joint polling place location. However, we were not provided with any information concerning the reasons for locating the joint polling place outside of the city, other than that the polling place was apparently not chosen solely for handicapped accessibility since you indicated accessible sites were available within the city. According to information provided by the Secretary of State's office, the county has been establishing consolidated rural voting places under its agreements to provide centralized voting places and to increase economy and efficiency in the voting process. Many of these smaller cities have relatively few voters, increasing numbers of electors voting by absentee ballot, and not enough election workers to staff all the former voting sites.

Based on the foregoing, it is my opinion that under N.D.C.C. § 16.1-04-02, a voting place may be established outside of a precinct or boundaries of a city for good and sufficient reason by a city, such as enhancing the elective franchise by increasing accessibility and ease of voting for purposes of implementing federal and state laws, as well as providing a central voting place for voters. It is my further opinion that while a city may, under proper circumstances, agree to a voting place that may be outside the boundaries of the city, a county may not compel a city to agree to such a joint voting place.

Sincerely,

Wayne Stenehjem
Attorney General

² See also N.D. Const. art. VII, § 10 (n.1, supra); cf. N.D.C.C. § 16.1-04-01(2) (governing body of a city may return jurisdiction granted to a city to alter the number and size of precincts located within its boundaries to the county and the county must accept that jurisdiction).

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Enclosure