

**LETTER OPINION
2002-L-11**

February 13, 2002

Mr. Lyle R. Bopp
Sargent County State's Attorney
PO Box 125
Forman, ND 58032-0125

Dear Mr. Bopp:

Thank you for your letter requesting my opinion on the need for a county commissioner election following redistricting under N.D.C.C. ch. 11-07. From your letter and a telephone conversation with a member of my staff, the following background information has been obtained.

Your county commissioners directed the county redistricting board to redistrict the county pursuant to N.D.C.C. §11-07-03.1. The redistricting of county commissioner districts under N.D.C.C. § 11-07-03.1 enables all voters in the county to vote for each commissioner. The county redistricting board submitted to the county commission a plan changing the boundary lines in each of the five county commissioner districts. The county redistricting board's plan resulted in the following:

Revised district 1 -- Two current county commissioners reside here, one whose term expires in 2002, and one whose term expires in 2004.

Revised district 2 -- No current county commissioners reside here.

Revised district 3 -- One current county commissioner resides here, whose term expires in 2004.

Revised district 4 -- Two current county commissioners reside here, whose terms expire in 2002.

Revised district 5 -- No county commissioners reside here.

After the county commissioners received the revised district lines from the county redistricting board, the county commissioners determined to combine revised districts 1 and 2 into one district (hereafter, "combined district A") and revised districts 3, 4, and 5 into a second district (hereafter, "combined district B"). This would result in two county

commissioners being elected from combined district A who could live anywhere within the combined district, and three county commissioners being elected from combined district B who could live anywhere within that combined district. N.D.C.C. § 11-07-03.1¹.

You ask whether the commissioner in district 1 whose term expires in 2004 may serve out the remainder of his term, or must that commissioner stand for election this year. You also ask if the commissioner in district 1 whose term expires in 2002 would be denied from seeking reelection in 2002 if the commissioner whose term expires in 2004 is not required to run for reelection until 2004. You also ask whether both of these county commissioners are considered "holdover commissioners" pursuant to N.D.C.C. § 11-07-04(1).

State law provides:

11-07-03.1. Optional method of redistricting - Board of county commissioners may exercise option - Combination of districts - Election at large of candidates from districts. The board of county commissioners of any county which must redistrict under the provisions of this chapter may direct the county redistricting board to redistrict under the plan authorized by this section. In redistricting a county pursuant to this section, the redistricting board shall create districts of as nearly equal populations as is practicable, but such districts, when created wholly within the boundaries of a city, may coincide with the geographical boundaries of election wards. All of the candidates seeking the office of county commissioner in a county redistricted pursuant to this section shall be voted upon by the qualified electors of the entire county, but one of the commissioners to be elected must reside in each of the commissioners' districts created pursuant to this section. The official ballot shall designate the commissioner district of each candidate by having printed thereon the words "of commissioner district _____" in close proximity to the candidate's name. Where persons are seeking nomination as candidates for the office of county commissioner at a primary election, the two candidates from each of the commissioners' districts receiving the highest number of votes will be deemed nominated. If only one candidate is seeking nomination from a particular commissioner district, that candidate will be deemed nominated. Following redistricting pursuant to this section, the board of county commissioners may combine two or more of the districts so created by resolution passed by a majority of the total membership of the board. In the event that two or more commissioners' districts are combined, the number of commissioners elected who must

¹ Section 11-07-03.1, N.D.C.C., states, "[i]n the event that two or more commissioners' districts are combined, the number of commissioners elected who must reside in the combined district shall be equal to the number of districts combined."

reside in the combined district shall be equal to the number of districts combined. In the event that a county commissioner shall change the place of residence within the county after election from a particular district, the commissioner shall be allowed to complete the remainder of that term of office. Candidates elected as county commissioners on a staggered basis as provided in section 11-07-04 shall be elected at large, but must reside in the same districts as the commissioners whom they are to succeed in office.

11-07-04. Commissioners' terms of office - Staggered terms.

1. When redistricting is completed or if failure to redistrict requires at large election of commissioners as provided in section 11-07-03, all commissioners then holding office who will be elected in the same manner, either from districts or at large, as they were elected at the last election shall complete the remainder of that term of office. However, an election must be held at the next general election in any district where redistricting places two or more holdover commissioners in that district or leaves a district without a commissioner residing in the district. In those counties retaining the same method of electing county commissioners as that utilized before a decennial, or other, redistricting, elections must continue on a staggered basis in accordance with the same classes in force before the effective date of a redistricting. At the first general election following redistricting of the county or election of commissioners at large, the county commissioner offices held by commissioners whose terms would end in the month of December following that general election must be open for election.

....

(Emphasis added.)

The result of the county commissioners' actions combining revised commissioner districts 1 and 2 into combined district A is that two county commissioners must represent that combined area and may reside anywhere within that combined area. In this case, one of those commissioner's terms expires in 2002 and the other expires in 2004. The answer to your questions depends on the relationship between a county commission's decision to combine districts under N.D.C.C. §11-07-03.1 and the following language in N.D.C.C. § 11-07-04:

However, an election must be held at the next general election in any district where redistricting places two or more holdover commissioners in that district or leaves a district without a commissioner residing in the district.

The term “holdover commissioner” is not defined in North Dakota law. Ordinarily, terms that are not specifically defined in the Code are given their plain, ordinary, and commonly understood meaning. Kim-Go v. J. P. Furlong Enterprises, Inc., 460 N.W.2d 694 (N.D. 1990); N.D.C.C. § 1-02-03. However, it is apparent that the usual meaning is not what is contemplated by the term “holdover commissioners” in N.D.C.C. § 11-07-04(1). The more common meaning of “holdover” is “[o]ne that remains from an earlier time, esp. an officeholder kept in his position after his term is over.” American Heritage Dictionary 616 (2d coll. ed. 1991). “‘To hold over,’ when applied to an officer, implies that the office has a fixed term which has expired, and the incumbent is holding into the succeeding term.” 19A Words and Phrases 288 (1970) (citing State v. Simon, 26 P. 170, 174 (Or. 1891)); accord State ex rel. Spaeth v. Olson, 359 N.W.2d 876, 881 (N.D. 1985).

It is evident from the context and usage of the term “holdover commissioners” in N.D.C.C. § 11-07-04(1) that the more common and ordinary meaning of a holdover could not have been intended since the context of the statute concerns county commissioners who remain in office following redistricting under N.D.C.C. ch. 11-07, not county commissioners who remain in office following the expiration of their legal terms of office. Similarly, the term “holdover” appears in at least one other statute dealing with state legislators also in the context that makes clear the term is not being used to refer to holding office beyond the term specified in the law. See N.D.C.C. § 54-44.1-08.²

It is my opinion, based on the context of the term “holdover commissioner” and its usage in N.D.C.C. § 11-07-04(1), that it refers to the fact that the commissioner retains part of his or her term following the year redistricting is completed. Thus, in this particular instance, the county commissioner who was elected in 2000 holds over following redistricting until the year 2004 when his term expires. The commissioner whose term expires in 2002 is not a holdover commissioner within the meaning of N.D.C.C. § 11-07-04(1) because this commissioner’s term expires in the same year the redistricting plan goes into effect,³ i.e., the commissioner is not “holding over” beyond the year redistricting is complete and effective.

² “The official budget report must be transmitted by the governor to all holdover legislators and legislators-elect not later than three days after the commencement of the session of the legislative assembly.” Id.

³ “Redistricting shall be completed by the filing [of the plan] with the county auditor by April first of an even-numbered year to be effective for that year’s elections.” Id.

In my opinion, the underlined sentence in the quoted portion of N.D.C.C. § 11-07-04 is intended to apply to commissioner districts when they have not been combined by the county commission pursuant to N.D.C.C. § 11-07-03.1. In the case where county commissioner districts are not combined under N.D.C.C. § 11-07-03.1, it is important that there not be more than one holdover commissioner in each district because each district can be represented by only one commissioner residing in the district. Also, if the county redistricting board's revisions in district lines have left some area of the county without a current commissioner residing in a revised district, this sentence would require an election to elect a county commissioner who does reside within that district.

In the scenario you present, where county commissioners have combined districts, it is necessary for two county commissioners to reside in and represent combined district A (which consists of two former districts), and for three county commissioners to reside in combined district B (which consists of three former districts). Having two or more holdover commissioners in a combined district is not problematic because it is necessary that two or more people will be representing the combined district.

Thus, it is my opinion that the sentence in N.D.C.C. § 11-07-04(1) regarding holdover commissioners does not apply to either of the two combined districts that have been created by the county commission pursuant to N.D.C.C. § 11-07-03.1.

Thus, where a county commission has combined districts 1 and 2 into a combined district A, and districts 3, 4, and 5 into a combined district B, the sentence regarding holdover commissioners in N.D.C.C. § 11-07-04 is not relevant. The commissioner in combined district A whose term expires in 2004 is a holdover commissioner who will not need to run for election in 2002, and will serve out his term until 2004. The commissioner in combined district A whose term ends in 2002 may seek reelection in 2002 because combined district A must be represented by two county commissioners, and one slot will need to be filled in 2002 because the commissioner's 2002 term will have expired.

Sincerely,

Wayne Stenehjem
Attorney General