

**LETTER OPINION
2002-L-62**

October 25, 2002

Mr. James Wold
Griggs County State's Attorney
PO Box 541
Cooperstown, ND 58425-0541

Dear Mr. Wold:

Thank you for your letter asking whether a county recorder may perform a marriage ceremony outside of the county for which the recorder was elected.

"Ordinarily an officer who holds an office for a particular political subdivision is powerless to perform an official act when beyond the territorial limits of the political subdivision for which [the officer] was elected." Markham v. Cornell, 18 P.2d 158, 159 (Kan. 1933). A county officer's jurisdiction is coextensive with the county for which the officer is elected or appointed. 20 C.J.S. Counties §97; Cade v. State, 51 S.W.2d 857, 858 (Ark. 1932). However, officers may have authority to act on the county's behalf outside of the county. 20 C.J.S. Counties § 97. The Legislature may, by law, require certain official acts to take place beyond the sovereignty of the political subdivision that conferred the officer's power, but "such acts are done by its express permission and the power cannot be implied." 67 C.J.S. Officers § 190. For example, county sheriffs have specific authority to transport prisoners to the penitentiary or patients to the state hospital, and county law enforcement officers in fresh pursuit are specifically authorized to enter another county to continue that pursuit and make an arrest. N.D.C.C. §§ 11-15-24 and 11-15-33.

Performing a marriage ceremony is an official act for a county recorder. N.D.C.C. §§ 14-03-09, 14-03-22. Because extraterritorial jurisdiction for county officers may not be implied, extraterritorial jurisdiction must be statutorily authorized. While recorders may perform the marriage ceremony, N.D.C.C. §14-03-09, and recorders are authorized to collect a fee for performing a marriage ceremony, N.D.C.C. §14-03-22, nothing in these laws provides that a recorder has extraterritorial jurisdiction to solemnize a marriage. Similarly, N.D.C.C. ch. 11-18, governing recorders, does not authorize a county recorder to act in an official capacity outside of his or her county.

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Therefore, it is my opinion that a county recorder may not solemnize a marriage outside of the county for which he or she has been elected.¹

Sincerely,

Wayne Stenehjem
Attorney General

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¹ In the event a recorder has already performed a marriage ceremony outside of the county in which elected, there is authority for the proposition that “a lack of qualification or right on the part of the minister or other official will not invalidate [a] marriage.” Woodward v. Blake, 164 N.W. 156, 159 (N.D. 1917) (Bruce, C. J. dissenting). See also State v. Ely, 113 N.W. 711, 716 (N.D. 1907) (judge acting in good faith outside of appropriate district will be recognized as having de facto jurisdiction in criminal and civil cases and performing the marriage ceremony).