

**N.D.A.G. Letter to Kubik (Dec. 5, 1986)**

December 5, 1986

Mr. Joseph H. Kubik  
Dunn County State's Attorney  
26 East Third Street  
P.O. Box 643  
Dickinson, ND 58602-643

Dear Mr. Kubik:

Thank you for your letter of November 26, 1986, inquiring as to which authority is able to employ and dismiss a deputy clerk of court. You mention that your county has a population of less than 25,000. As such, the clerk of the district court is also the clerk of the county court by operation of law. N.D.C.C. §27-07.1-09. We further assume that the clerk of the district court has appointed someone as deputy clerk of the district court. We see no reason why the appointed deputy clerk cannot also act as a deputy clerk of the county court.

Given these facts, we believe the appropriate statute in resolving your question is N.D.C.C. §11-10-11. This statute authorizes the board of county commissioners to establish the number and salaries of deputies for, among other offices, the clerk of the district court. In 1982, an Attorney General's opinion was issued as to the scope and impact of this statute upon the ability of a sheriff to hire or fire a deputy. 1982 N.D. Op. Att'y Gen. 108. Our opinion then and my opinion now is that this statute authorizes the hiring and firing of a deputy by the named county officials acting on their own initiative so long as the appointment process is within the salary set and the number of employees approved by the county commission. A copy of this opinion is enclosed for your review. Also enclosed is a copy of a letter to Grand Forks County State's Attorney Odegaard which expands upon the 1982 opinion.

With respect to the dismissal of county officers, such action must occur in compliance with applicable county policies, state and federal employment discrimination laws, and case law addressing due process concerns in terminating public employment.

Thus, it is my opinion that the authority to employ and dismiss a deputy clerk of court (who operates as the deputy clerk for the clerk of the district court and clerk of the county court who are one in the same) lies with the clerk of court. However, it must be remembered that opinions of the Attorney General, although entitled to consideration, are not binding upon the judiciary.

Sincerely,

Nicholas J. Spaeth

CV  
Enclosures