

OPINION
65-441

July 6, 1965 (OPINION)

Mr. William L. Paulson

State's Attorney

Barnes County

RE: Townships - Zoning - County Regulations

This is in reply to your request for an opinion of this office construing chapter 11-33 of the North Dakota Century Code, by reference thereto, certain provisions of chapter 58-03 of the North Dakota Century Code with specific regard to the provision of section 11-33-20 of the North Dakota Century Code that:

The provisions of this chapter shall in no way prevent townships from making regulations as provided in sections 58-03-11 to 58-03-15, inclusive, but such townships may relinquish their power to enact zoning regulations to the county by resolution of the board of township supervisors. * * * *."

You mention that in the situation in which your county is involved that one township resolution of the Board of Township Supervisors relinquished its rights under the above-quoted statutory provision, and that the township did not petition to withdraw or appeal from the zoning ordinance established by the county zoning resolution within the time prescribed by said chapter 11-33.

At the current time more than seventy of the electors and voters in the township have petitioned the county commissioners for withdrawal as has the Board of Township Supervisors itself:

You call our attention to the fact that the Township Board passed the relinquishment resolution at a meeting of the Board of Township Supervisors on June 8, 1964. The township electors apparently were not notified of this matter and, of course, had no opportunity to vote upon the matter at their annual meeting.

We are enclosing herewith copies of a previous opinion and of other correspondence on related types of situations. The problem you present is not without difficulty; however, our examination of the relevant statutory provisions indicates that the resolution provided for by the above-quoted portion of section 11-33-20 is strictly a resolution of the Board of Township Supervisors. While a "straw vote" of township electors might possibly be taken the final authority appears to rest in the Board of Township Supervisors.

On such basis it is our opinion, in accordance with the statutory provision and the facts you give, that the township has validly relinquished its zoning authority to the county and that in the

absence of a statutory procedure for same there is no method by which the township can withdraw from that relinquishment at the current time.

HELGI JOHANNESON

Attorney General