

LETTER OPINION
2002-L-66

November 15, 2002

Ms. Robin Huseby
Barnes County State's Attorney
230 4th St NW
Valley City, ND 58072

Dear Ms. Huseby:

Thank you for your letter requesting my opinion on the legality of the Barnes County Board of County Commissioners' actions in advertising for the ex officio clerk of district court position.

Chapter 27-05.2, N.D.C.C., enacted in 1999, changed the manner in which clerk of district court services are provided, how they are funded, and how the clerks of district court positions are filled. 1999 N.D. Sess. Laws ch. 278, §50. Prior to the pertinent effective dates of the 1999 changes, the clerks of district court were elected county officials. 1999 N.D. Sess. Laws ch. 278, § 7; N.D.C.C. § 11-10-02. The 1999 changes eliminated the clerk of district court as an elected position. 2000 N.D. Op. Att'y Gen. L-128.

Under N.D.C.C. § 27-05.2-02, clerk of district court services are provided in one of three ways: (1) by the state supreme court; (2) by the county; or (3) by the supreme court through a contract with the county. A board of county commissioners must provide the supreme court with a resolution indicating the county's election to provide clerk of court services under N.D.C.C. §27-05.2-02(2). "[T]he individual designated by a board of county commissioners to provide clerk of district court services under [N.D.C.C. §27-05.2-02] subsections 2 or 6 serves as ex officio clerk of district court." N.D.C.C. §27-05.2-02(1). Thus, the clerk of district court in a county that elects to provide its own clerk of district court services pursuant to N.D.C.C. § 27-05.2-02(2) is no longer elected, but instead is designated by the board of county commissioners and holds the title of "ex officio clerk of district court."

You advised my staff that the current clerk of court was elected to a term of four years, which ends December 31, 2002. Your letter and accompanying memo also state that,

pursuant to N.D.C.C. §27-05.2-02(2), Barnes County elected to provide clerk of district court services at the county's own expense. As part of the designation process for the ex officio clerk of district court, the Barnes County commissioners advertised for the position.¹ The current clerk of district court has questioned whether the county commissioners may appoint someone other than the current clerk of district court as the ex officio clerk of district court.

Article VII, section 8, of the North Dakota Constitution states that the term of every elective county office is four years. As such, the current clerk of district court is constitutionally entitled to serve no more than the four year term of office for which she was elected. After that term expires, the elected clerk of district court has no right to continue in that position.² Further, on January 1, 2003, after that four year term has expired, the position of ex officio clerk of district court replaces the position of clerk of district court, and new statutory provisions control. See 1999 N.D. Sess. Laws ch. 278. Those provisions allow the county commission to designate the ex officio clerk of district court. N.D.C.C. §27-05.2-02. There is no statutory requirement that the county commissioners designate the immediately previous clerk of district court to the position. Id. Accordingly, it is my opinion the county commissioners are not required to appoint the current clerk of district court as the ex officio clerk of district court.

Sincerely,

Wayne Stenehjem
Attorney General

sam/vkk

¹ Since the Barnes County Commissioners now have the authority to appoint an ex officio clerk of district court, the manner in which they do so is left to their discretion. See Haugland v. City of Bismarck, 429 N.W.2d 449, 453-54 (N.D. 1988). (The manner and means of exercising a particular power, where not limited or specified by the Legislature, is left to the discretion of the political subdivision.) Because there is no statutorily prescribed manner for filling the clerk's position, it is within the commission's discretion to advertise for it.

² Whether an individual has a property interest in a particular employment is generally a question of fact on which this office will not opine. See 1993 N.D. Op. Att'y Gen. L-261. However, in the case of an elected position, the individual knew before he or she took the position that it would terminate at a given time. Thus, individuals in an elected position have no expectation that the position would continue past their term, and, absent some contractual right or other recognized interest, have no property interest in their position beyond the current term.