

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 98-F-10

Date issued: April 24, 1998

Requested by: Keith E. Nelson, State Court Administrator

- QUESTIONS PRESENTED -

I.

Whether a county commission's resolution separating the offices of register of deeds and clerk of district court for "administrative and budgetary purposes only" meets the requirements of N.D.C.C. § 11-17-11 for "a resolution separating the offices of register of deeds and clerk of district court pursuant to section 11-10-02."

II.

Whether a resolution separating the offices of register of deeds and the clerk of district court for "administrative and budgetary purposes only" creates an office of clerk of court for purposes of the 1998 general election.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion a county commission's resolution separating the offices of register of deeds and clerk of district court for "administrative and budgetary purposes only" does not meet the requirements of N.D.C.C. § 11-17-11 for "a resolution separating the offices of register of deeds and clerk of district court pursuant to section 11-10-02."

II.

It is my opinion a resolution separating the offices of register of deeds and the clerk of district court for "administrative and budgetary purposes only" does not create an office of clerk of court for purposes of the 1998 general election.

- ANALYSES -

I.

N.D.C.C. § 11-17-11, enacted in 1989, allows counties to request state funding for the office of the clerk of district court by employing an application process to the North Dakota Supreme Court, the Supreme Court's inclusion of the county's request for funding in its budget, and the enactment of appropriations necessary to fund that budget by the Legislative Assembly. The application process requires the board of county commissioners to file a written notice with the State Court Administrator before February 1 of the year prior to the start of the next state biennium. The written notice must be accompanied by, among other things, a resolution separating the offices of register of deeds and clerk of district court pursuant to N.D.C.C. § 11-10-02.

If the Supreme Court approves a county's request to transfer responsibility for funding of the clerk of district court to the state, the State Court Administrator includes in the comprehensive budget all salaries and expenses for the clerk of district court and the clerk's deputies and employees. If the Legislative Assembly approves the comprehensive budget, the clerk of the district court and the clerk's deputies and employees become employees of the North Dakota Judicial System. At the start of the next biennium the clerk of the district court would remain "as full-time clerk of district court at a salary which is not less than the salary paid to the clerk of district court in the year prior to the start of that biennium period." N.D.C.C. § 11-17-11. Pursuant to N.D.C.C. § 11-10-02, "[t]he clerk of district court elected pursuant to this section is not subject to election in any future election that occurs after the start of the state biennium after the county has properly initiated the option and the legislative assembly has provided appropriations pursuant to section 11-17-11."

N.D.C.C. § 11-10-02 requires in counties with a population of 6,000 or less that the register of deeds "perform the functions of the clerk of the district court, unless the board of county commissioners adopts a resolution separating the offices no less than thirty days before petitions for nominations to county offices may first be filed for the primary election." N.D.C.C. § 11-10-02 does not define the term "separate." It must be understood, therefore, in its ordinary sense. N.D.C.C. § 1-02-02. As ordinarily understood, the term "separate" means "[t]o set or keep apart; disunite;" "[t]o become disconnected or severed; come apart;" "[e]xisting as an entity; independent;" "[n]ot shared." The American Heritage Dictionary 1118 (2d coll. ed. 1991).

The resolutions in question do not explain what is intended by separating the offices of register of deeds and clerk of district court for "administrative and budgetary purposes only." The fact the two offices are separated only for budgetary and administrative purposes indicates they are not completely separate; each office does not exist as an independent entity. N.D.C.C. § 11-17-11(2) states a resolution must separate the offices of register of deeds and clerk of district court; the language does not authorize a partial separation.

My staff has been informed that separating the offices for "administrative and budgetary purposes only" was an effort to separate the offices without having to actually have separately elected register of deeds and clerk of district court. This is supported by the language of the resolutions. The resolutions do not create an office of clerk of district court, they simply attempt to separate the functions of the clerk of district court from the functions of the register of deeds. An office of clerk of district court is not created, so no clerk of district court is elected. N.D.C.C. §§ 11-10-02 and 11-17-11 contemplate the resolution creating an office of register of deeds and clerk of district court with the clerk of district court being a full-time elected official. N.D.C.C. § 11-17-11 provides that if the Legislative Assembly approves the comprehensive budget, at the start of the next biennium the clerk of the district court would "remain as full-time clerk of district court." N.D.C.C. § 11-10-02 indicates the clerk of district court that becomes an employee of the North Dakota Judicial System was "elected" to the position. The language in question does not create an office of clerk of court for purposes of the 1998 general election. Thus, a clerk of district court does not exist to become a full-time employee of the North Dakota Judicial System.

It is my opinion that a resolution separating the offices of register of deeds and clerk of district court for "administrative and budgetary purposes only" does not meet the requirements N.D.C.C. § 11-17-11.

## II.

N.D.C.C. § 11-10-02 requires in counties where the population is 6,000 or less that the register of deeds "shall perform the functions of the clerk of the district court, unless the board of county commissioners adopts a resolution separating the offices no less than thirty days before petitions for nomination to county offices may

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first be filed for the primary election." The language in the resolutions separate the two offices for only administrative and budgetary purposes. This limiting language does not separate the offices for purpose of election.

It is my opinion that a resolution separating the offices of register of deeds and the clerk of district court for "administrative and budgetary purposes only" does not create an office of clerk of court for purposes of the 1998 general election.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Heidi Heitkamp  
ATTORNEY GENERAL

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