

N.D.A.G. Letter to Johnson (Jan. 30, 1991)

January 30, 1991

Mr. James O. Johnson
City Attorney
P.O. Box 68
Garrison, ND 58540

Dear Mr. Johnson:

Thank you for your January 7, 1991, letter requesting my opinion on the effect of a city's being unable to find a willing qualified candidate for the zoning commission. You ask if the candidate sought must reside outside the city limits but within the one-half mile territorial limit of the zoning regulation authority.

The pertinent portion of North Dakota Century Code section 40-47-06 provides:

In addition to the members appointed by the city, the zoning commission shall include at least one person residing outside of the corporate limits of a city having a population of less than five thousand Such persons shall be appointed by the board or boards of county commissioners of the county or counties within which such zoning authority is to be exercised and shall reside within the territorial limits of the zoning regulation authority exercised by the city, if such persons are available and will serve on the zoning commission.

N.D.C.C. § 40-47-06 (emphasis supplied.)

The requirement that the zoning commission include a person residing outside the city limits is not limited by the qualification that the person "reside within the territorial limits of the zoning regulation authority." The duty of the county board of commissioners to appoint a person to the zoning commission is limited, but only to the extent that if persons residing within the territorial limits of the zoning regulatory authority are available and willing to serve, one of them must be appointed. If no such person is available or willing to serve, the Board is still required to appoint someone from the county to the zoning commission. The only limitation on the residence of the person appointed, in that case, is that it be outside the city limits.

Consequently, it is my opinion that the county board of commissioners for the county whose area would be affected by the exercise of zoning regulation within the one-half mile radius of the city would need to appoint one person who lives outside of the corporate limits of Garrison to sit on the zoning commission. If it is unable to find anyone willing to serve on the zoning commission who resides within the one-half mile territorial limit, it is free to appoint anyone within the county who lives outside the city limits.

Sincerely,

Nicholas J. Spaeth

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