

N.D.A.G. Letter to Boyum (March 6, 1986)

March 6, 1986

Mr. Arne F. Boyum
Attorney at Law
P.O. Box 908
Rolla, ND 58367

Dear Mr. Boyum:

Thank you for your letter of February 14, 1986, inquiring as to the eligibility of an individual to serve as municipal judge in a city with a population of less than 3,000 where that person does not live in the city and is not a qualified elector within the city.

In 1966, this office had the occasion to issue an opinion on the question of whether a person desiring to run for municipal judge must comply with the residency requirement of N.D.C.C. § 40-13-01. 1964-66 N.D. Op. Att'y. Gen. 37. The essence of N.D.C.C. §40-13-01 was that, and continue to be, no person is eligible to hold elective municipal office unless he has been a resident of the city for at least nine months preceding the election and is a qualified elector within that city. At the time the 1966 opinion was issued from this office, N.D.C.C. §40-18-01 did not contain any language exempting a candidate from the office of municipal judge from the requirements of N.D.C.C. §40-13-01.

The opinion of this office in 1966 concluded that there was no exception contained within N.D.C.C. §40-18-01 from the residency requirement of N.D.C.C. §40-13-01. As such, the conclusion was drawn that any person who has not been a resident of a city for nine months is not qualified to hold the office of municipal judge. The following excerpt from the opinion is most appropriate.

Had the Legislature intended that the municipal judge need not be an elector of the city or village for nine months as had been the case with the police magistrates, we believe they would have so stated as was done in the creation of the office of county justice. By its terms section 40-13-01 of the North Dakota Century Code is applicable to all elective municipal offices. We can find nothing in chapter 40-18, as amended, which would except the elective office of municipal judge from this provision. The two provisions are not contradictory. Id. at 39-40.

In 1973 the North Dakota Legislature did indeed amend N.D.C.C. § 40-18-01 in apparent response to this particular attorney general's opinion. The sole purpose of the amendment was to exempt those persons desiring to hold the elective office of municipal judge from the residency requirement of N.D.C.C. § 40-13-01. 1973 N.D. Sess. Laws 326, 1. The following sentence now found within this particular statute is a result of this legislative amendment.

In a city with a population of less than 3,000, the municipal judge may be, but need not be, an attorney licensed to practice law in the state, nor shall he be required to be a resident of the city in which he is to serve.

As a result of the legislative amendment of N.D.C.C. § 40-18-01, in apparent response to the 1966 attorney general's opinion, the inescapable conclusion is that N.D.C.C. §40-18-01 contains an exception to the residency requirements of N.D.C.C. §40-13-01 only with respect to cities with a population of less than 3,000. In other words, a person desiring to hold the elective office of municipal judge in a city with a population of less than 3,000 need not comply with the residency requirements of N.D.C.C. §40-13-01.

Sincerely,

Nicholas J. Spaeth

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