

Date Issued: April 23, 1986 (AGO 86-15)

Requested by: Richard L. Schnell
Morton County State's Attorney

- QUESTION PRESENTED -

Whether the discretionary employment of a county highway engineer, pursuant to N.D.C.C. section 11-31-01, may be terminated by a majority vote of the qualified electors voting on such a question at a primary or general election.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the discretionary employment of a county highway engineer, pursuant to N.D.C.C. section 11-31-01, may not be terminated by a majority vote of the qualified electors voting on such a question at a primary or general election.

- ANALYSIS -

North Dakota law provides at N.D.C.C. chapter 11-31 the methods by which a county highway engineer may be employed by the board of county commissioners or created by the voters in that county. In reviewing N.D.C.C. sections 11-31-01 and 11-31-01.1, it is readily apparent that two separate procedures have been legislatively established so as to bring about either the appointment of a county highway engineer or the creation of the office of county highway engineer. The relevant statutes state, in pertinent part, as follows:

11-31-01. COUNTY HIGHWAY ENGINEER. The board of county commissioners of any county in this state may at the discretion of the board employ a qualified county highway engineer at any time or the office of county highway engineer may be created in any county in this state by an election duly held. (Emphasis supplied).

11-31-01.1. ELECTION FOR CREATION OR TERMINATION OF OFFICE OF COUNTY HIGHWAY ENGINEER. Upon the filing with the county auditor of a petition signed by not less than five percent of the qualified electors of the county as determined by the total number of votes cast in the last election, representing not less than seven percent of the voting precincts of the county, asking that an election be held on the question of the creation of the office of county highway engineer, the board of county commissioners shall submit the question at the next regular primary or general election. . . .

Clearly, the above statutes provide for two ways in which a county highway engineer may come into existence. The board of county commissioners "at the discretion of the board" may employ a qualified county highway engineer at any time. On the other hand, the majority of the electors of the county may vote in favor for the creation of the office of county highway engineer in a regular primary or general election.

The question then occurs as to the manner in which the county highway engineer may be terminated as a county officer. The last sentence of N.D.C.C. section 11-31-01.1 states as follows:

The office so created shall not be terminated except upon the instruction of a majority of the qualified electors voting on the question in an election similarly held but any engineer appointed to fill such office may be removed from office by action of the board. (Emphasis supplied).

This particular sentence of N.D.C.C. section 11-31-01.1 is found within a statute which discusses only an election for the creation of the office of county highway engineer. The statute in which this particular sentence is found also discusses the manner in which the question of whether the office of county highway engineer shall be created and when such a question must be submitted at the next regular primary or general election. Nowhere in N.D.C.C. section 11-31-01.1 is there any discussion of the discretionary authority of the board of county commissioners to employ a qualified county highway engineer as previously provided for in N.D.C.C. section 11-31-01.

The primary purpose in interpreting statutes is to ascertain and carry out the legislative intent so expressed. *Novak v. Novak* 24 N.W.2d. 20 (N.D. 1946). In construing statutes, consideration must be given to ordinary sense of words used, the context in which such words are used, and the whole act and purpose sought to be accomplished. *Harding v. City of Dickinson* 33 N.W.2d. 626 (N.D. 1948). Finally, when the wording of a statute is clear and free of all ambiguity, the letter of statutes may not be disregarded under the pretext of pursuing its spirit. N.D.C.C. section 1-02-05.

In construing N.D.C.C. sections 11-31-01 and 11-31-01.1, the purposes sought to be accomplished as expressed in the clear and unambiguous words used within these statutes clearly indicate the establishment of two separate and independent methods by which a county highway engineer may come into existence. Such a position may occur at the discretion of the board of county commissioners or may occur through an election process initiated by a certain percentage of qualified electors within the county.

With respect to the termination language of the last sentence of N.D.C.C. section 11-31-01.1, the key phrases contained within this statutory sentence ("the office so created" and "in an election similarly held") lead to the inescapable conclusion that such termination authority exists solely with respect to the creation of the office of county highway engineer as that office may have been created by the voters. Such termination authority does not exist with respect to discretionary employment of a county highway engineer as may have occurred by the board of county commissioners. The context in which the termination sentence of N.D.C.C. section 11-31-01.1 is found as well as the overall purpose and procedures provided for in N.D.C.C. chapter 11-31 add support to this conclusion.

Therefore, it is my opinion that where a county highway engineer has been employed at the discretion of the board of county commissioners,

such employment may not be terminated by a majority vote of the qualified electors voting on such a question at a primary or general election. Instead, only the board of county commissioners may take action with respect to its discretionary employment of such an individual. The termination authority provided to the electors with respect to the office of county highway engineer exists only with respect to such an office which has previously been created by the electors of the county.

Information submitted with respect to this opinion request suggests that the Morton County highway engineer was employed at the discretion of the board of county commissioners. However, this matter is a factual question which can only be determined by Morton County officials in reviewing the particular facts and circumstances of this matter. As this office is not privy to the particular facts and additional information as to the manner in which the Morton County highway engineer has come into being, this office expresses no opinion on this factual issue and leaves to the appropriate county officials such a determination.

- EFFECT -

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

NICHOLAS J. SPAETH
Attorney General

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