

LETTER OPINION
94-L-325

December 1, 1994

Mr. Jay V. Brovold
Billings County State's Attorney
P.O. Box 187
Medora, ND 58645-0187

Dear Mr. Brovold:

Thank you for your November 10, 1994, letter concerning the residency requirements for a county commissioner. You ask whether a recently elected county commissioner is qualified to hold the office when he does not have a physical residence in the county. A similar question was discussed in 1994 N.D. Op. Att'y Gen. 96 (94-23), a copy of which is enclosed for your information. The central question presented in that opinion was whether a county social service board member who was moving out of the county and who would no longer have a home or residence within the county could lawfully remain on the board until the expiration of his term. As you will note, it was my opinion that such a county officer may not remain on the county social service board unless he remains a legal resident of the county under N.D.C.C. ? 54-01-26, or unless he falls within the provisions of another statute which is not relevant here.

In your letter you refer to N.D.C.C. ? 11-10-04 which provides that "a county officer must be a qualified elector in the county in which the person is chosen or appointed, and a county commissioner must be a qualified elector in the district from which the commissioner is chosen." In 1994 N.D. Op. Att'y Gen. 96 at 98, I noted the following:

N.D.C.C. ? 11-10-04 states that, unless the laws of this state provide otherwise, "a county officer must be a qualified elector in the county in which the person is chosen or appointed." A qualified elector means a citizen of the United States who is at least 18 years old and who is a North Dakota resident. N.D. Const. art. II, ? 1. It is my opinion that the requirement in N.D.C.C. ? 11-10-04 that

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a county officer must be a qualified elector "in the county", means that the officer must be a resident of the county, as well as meet the necessary requirements to be a qualified elector as provided in Article II, Section 1 of the North Dakota Constitution. Whether a county officer who moves out of the county remains a resident of that county, must be determined by reviewing state law and North Dakota Supreme Court opinions.

Similarly, it is my opinion that the requirement in N.D.C.C. ? 11-10-04 that "a county commissioner must be a qualified elector in the district from which the commissioner is chosen" means that the commissioner must be a resident of the district as well as meet the necessary requirements to be a qualified elector as provided in the constitution. See also N.D.C.C. ? 16.1-01-04. This means that a county commissioner would have to be a resident of the district from which the commissioner was chosen in order to qualify to serve in that capacity. This interpretation is consistent with the requirement of N.D.C.C. ? 11-11-02 that a county commissioner be chosen by the electors "of the district of which [the commissioner] is a resident."

Residence is determined under the provisions of N.D.C.C. ? 54-01-26 and court cases interpreting that law. See 1994 N.D. Op. Att'y Gen. 96.

Determination of one's residence is a question of fact and therefore it would be inappropriate for this office to determine whether the particular commissioner involved here is a resident of the district from which he was elected. I would note, however, that it would be very difficult for an individual to establish residence under North Dakota law within a district without actually having a home or a residence in the district, and consistent with 1994 N.D. Op. Att'y Gen. 96, such a person could not serve as a county commissioner unless he establishes legal residence under N.D.C.C. ? 54-01-26.

Sincerely,

Mr. Jay V. Brovold
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Heidi Heitkamp
ATTORNEY GENERAL

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Enclosure