

LETTER OPINION
93-L-167

May 28, 1993

Mr. Wade G. Enget
Mountrail County State's Attorney
P.O. Box 369
Stanley, ND 58784-0369

Dear Mr. Enget:

Thank you for your May 10, 1993, letter requesting my advice as to how to fill vacancies on the Mountrail County Housing Authority. You state that the housing authority was created approximately 25 years ago by the Mountrail County Commission. Only three of the original appointees remain on the board and one of those members is quite ill and is unable to make scheduled meetings.

N.D.C.C. ? 23-11-05 addresses the appointment of the membership of county housing authorities. That section provides that the governing body of the county, after adopting a resolution, must appoint five persons as commissioners of the authority created for the county. The original appointments are for one, two, three, four, and five years respectively.

The bylaws of the Mountrail County Housing Authority adopt that procedure but do not address the issue of filling a vacancy. However, the statute provides that the housing authority's commissioners must be appointed for a term of five years after the terms of the original five commissioners expire and that vacancies must be filled for only the unexpired terms. Based upon the language in this section, I conclude that the county commissioners should have reappointed the existing members, or appointed new members, to the Mountrail County Housing Authority at the expiration of the terms of each of the original members.

The resolution of the present situation is to have the

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county commissioners appoint new members to the county housing authority. The terms of these members must be based upon the term of the person whom they are replacing. By way of illustration, assume an individual appointed in 1974 to a term ending in 1979, passed away in 1976 after two years of his term. Four years later, in 1980, the county commission replaced that individual. Three of the four years for which no one was appointed to fill the vacancy would complete the term of the deceased individual from 1976 to 1979. The fourth year of the four years would begin the new five-year term and there would be four years remaining on the term of the person newly appointed. In this way you will continue to have staggered terms for the members of the county commission.

If you have further questions on this matter, please do not hesitate to contact me.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

rms/pg