

N.D.A.G. Letter to Myers (Sep. 27, 1990)

September 27, 1990

Mr. Earle R. Myers, Jr.
Richland County State's Attorney
Law Enforcement Center
413 Third Avenue North
Wahpeton, ND 58075

Dear Mr. Myers:

Thank you for your September 14, 1990, letter inquiring whether the July 18, 1990, publication of the proposed Richland County home rule charter satisfies the requirements of N.D.C.C. § 11-09.1-03.

According to your letter, the original draft of the Richland County home rule charter was published on July 8, 1990. The proposed draft was received by the Richland County commission on August 21, 1990. The county commissioners accepted the proposed charter with some clerical corrections and directed that the issue be placed on the general election ballot. On September 13, 1990, the board of county commissioners reconsidered their action of August 21, 1990, and decided not to accept the charter with the clerical corrections. Instead, the board of county commissioners adopted the original version of the Richland County home rule charter which was published on July 8, 1990.

It is the original version which will appear on the general election ballot. Publication of that version occurred on July 8, 1990. You have informed a member of my staff that the county commissioners have decided to republish this original version on or about September 18, 1990. It is based on this republication that you calculate the total number of days between publication and the election date as 50 days.

N.D.C.C. § 11-09.1-02 requires the board of county commissioners to publish the proposed charter once in the official newspaper of the county. N.D.C.C. § 11-09.1-03 states that at least 60 days must elapse between the publication, and the vote of the citizens of that county at the next primary or general election.

According to the facts as presented to me, the board of county commissioners has published the proposed charter once in the official newspaper of the county. Furthermore, at least 60 days have passed since publication of this proposed charter (July 8, 1990). The charter is now to be submitted to a vote of the county citizens at the upcoming general election. Therefore, it is my opinion that the July 8, 1990, publication of the proposed charter satisfies the requirements of N.D.C.C. §§ 11-09.1-02, 11-09.1-03 and the charter may be legally placed on the November 6 general election ballot.

I attach no legal significance to the fact that the county commission originally accepted the proposed home rule charter with clerical corrections and then reconsidered their action and accepted the originally published home rule charter. Furthermore, the proposed republishing of the proposed original charter on or about September 18, 1990, is of no legal significance, but is merely gratuitous action.

However I note some of the corrections you describe as "clerical" may be viewed as substantive. Thus, my response might be different if the county commission had presented the original proposed charter with the "clerical corrections" to the voters without any further republication of the amended charter at least 60 days prior to the general election. For example, Art 5, § 1 of the charter discusses the city auditor's residency requirement. This "correction" gives the auditor 90 days following the time of appointment to become a resident of the county whereas the original version required the auditor to be a county resident throughout the auditor's term of office. Arguably, publication of the charter with "clerical corrections" less than 60 days prior to the election might invalidate the entire charter adoption procedure especially if any of the changes are regarded as substantive.

However, in this case, the original, not the corrected, version of the Richland County home rule charter as published on July 8, 1990, is being presented to the voters at the upcoming general election.

It is my opinion that the July 8, 1990, publication satisfies the requirements of N.D.C.C. §§ 11-09.1-02, 11-09.1-03, and that the issue may appear on the general election ballot.

Sincerely,

Nicholas J. Spaeth

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