

OPINION
70-90

May 29, 1970(OPINION)

Mr. Charles E. Crane
State's Attorney
Hettinger County

RE: Counties - Combination of Offices - Effective Date

This is in response to your letter in which you ask for our opinion on the following matter:

"Hettinger County has reportedly dropped to under 6,000 population as a result of the present Federal Census.

"Chapter 11-10-02 of the North Dakota Century Code as amended provides that 'Counties having a population of 6,000 or less, the Register of Deeds shall be Ex Officio of the District Court and County Judge.' This County has always heretofore been excess of 6,000 and presently elects a separate officer for Register of Deeds.

"Section 1-07-47 of the North Dakota Century Code provides that population shall be established according to the last preceding Federal Census. I am informed that the Federal Census does not become official until November fifteenth, whether this is a fact or not, I am not certain.

"The question then would be this:

"In Hettinger County, will candidates file---and primary and general elections held for the two separate office, namely, Register of Deeds and County Judge and Ex Officio Clerk of the District Court, or, based upon the drop in population below 6,000, will there be only one office of Register of Deeds which shall be Ex Officio County Judge and Clerk of the District Court? If the latter is the case, it would have to be known at this time as far as filing Petitions are concerned.

"One other possibility has occurred to me. If no change is to be resulting until the date that the Federal Census is official, and this date would be subsequent to the filing of Petitions and the Primary and General Elections, and Hettinger County has elected and qualified both a Register of Deeds and County Judge and Ex Officio Clerk of the District Court, would these offices and officers continue for the entire four-year term---or, would the result in the drop of population to less than 6,000 when official, automatically result in the existence of only the one office of Register of Deeds, who would be then Ex Officio County Judge and Clerk of the District Court and the automatic extinction and elimination of the office and officer of County Judge and Ex Officio Clerk of the District Court."

A similar question was raised in 1960, and on April 22, 1960, we issued an opinion to Mr. Elmer J. DeWald, County Judge at Napoleon, North Dakota, on the question. In that opinion, a copy of which is enclosed, we concluded that the population at the time of the election would be controlling.

Section 1-01-47 of the North Dakota Century Code provides as follows:

"POPULATION - DEFINITION. The term 'population' shall mean the number of inhabitants as determined by the last preceding state or federal census."

The State has not taken or directed any census to be taken, consequently the only official census we have to consider is the one conducted by the Federal government.

The Federal Act does not specifically state when an official announcement is to be made as a result of the census taken. 13 U.S.C.A., 141, directs that the secretary shall conduct a census in the year 1960 and every ten years thereafter, and that such census be taken as of the first day of April. The same section also requires that the tabulation of total population by states as required by the apportionment of representatives shall be completed within eight months of the census date and reported by the secretary to the President of the United States. Eight months after April first would bring the date to December first. This is the date on which the secretary must make an official report. In the absence of any other duty imposed upon the secretary, we must take December first as the date on which the census becomes official.

In arriving at this conclusion we are aware that some preliminary reports are furnished to news media and some of these preliminary reports are used for other purposes. It is also possible that figures might change prior to December first, the official date on which the report is made by the secretary to the President.

Section 11-10-02 of the North Dakota Century Code was amended so as to make the terms of the various county officials four years instead of two, but the consolidation of offices, depending upon population, has not been changed.

Likewise, section 173 of the North Dakota Constitution has been amended to change the term from two to four years, but the controlling constitutional provision still remains that there shall be elected in each county certain enumerated officers for a four year term. The constitutional provision then continues that certain offices shall be filled separately or be combined, depending upon the population. The population which determines which offices are to be combined and which are to be filled separately obviously is modified by the statement requiring that there shall be elected. The clear inference is that the population at the time of election is controlling.

It is therefore, our opinion that the official report which is made on December first is controlling. The elections are held prior to December first and it is, therefore, our opinion that the population figures derived and published as a result of the 1960 census would be used in determining which offices are combined and which offices are filled separately.

If a county is reduced in population as a result of the 1970 census, the reduction would apply to the first election held after the official publication of the census report. Whether the offices of register of deeds, county judge and clerk of court are to be combined or elected separately because of population would be a factor in the election held in 1974.

HELGI JOHANNESON
Attorney General