

**OPINION
71-93**

March 2, 1971 (OPINION)

Mr. John O. Garaas
State's Attorney
Fargo, ND

RE: Counties - County Auditor - Term of Office

This is in reply to your letter of date 23 February 1971 with regard to the date a newly elected county auditor takes office.

You call to our attention the fact that the county auditor, pursuant to section 11-13-01 of the North Dakota Century Code, "shall qualify and enter upon the discharge of the duties of his office on or before the first Monday of April next succeeding his election, or within ten days thereafter."

You request our opinion as to when a county auditor can take over asking specifically whether the incoming county auditor sets the date or whether the outgoing county auditor sets the date.

We note certain processes an incoming officer must go through. For an example, we note the provision of section 11-10-09 of the North Dakota Century Code providing that:

OATH OF COUNTY OFFICERS. Every county officer, before entering upon the discharge of his duties, shall take and subscribe the oath prescribed for civil officers."

The term of county auditor under the 1963 Amendment of section 173 of the North Dakota Constitution is four years, "and until their successors are elected and qualified."

Looking to the specific wording of section 11-13-01 it appears to be a direction to the incoming officer as to when such incoming officer shall "qualify" and take over the office.

On such basis in practical operation, we would assume that the incoming officer could not enter upon the discharge of the duties of the office until the basic four-year term of the incumbent had expired. At any time after the incumbent's basic four-year term had expired, on or before the first Monday of April next succeeding his election, or within ten days thereafter, the incoming officer could take his oath of office, "qualify" and enter upon the discharge of the duties of his office. The prior incumbent officer would, of course, under the terms of said section 173 thus continue in office until such qualification of the successor.

In specific answer to your question, the general area of the changeover date is specified in the constitutional and statutory provisions. The discretion to be exercised in determining the precise instant within the constitutionally and statutorily prescribed changeover period of the actual changeover is given to the incoming officer, the outgoing officer in effect continuing in office

until his successor "qualifies" and thus takes over.

We hope the within and foregoing will be sufficient for your purpose.

HELGI JOHANNESON

Attorney General