STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
FAX (402) 471-3297

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#93088

STATE OF NEBRASKA
OFFICIAL
JUN 29 1992
DEPT. OF JUSTICE

DATE: June 26, 1992

SUBJECT: Neb.Rev.Stat. § 23-269; When does a redistricting plan for county supervisors take effect?

REQUESTED BY: Senator George Coordsen, Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

Some Nebraska counties have adopted a township form of government under the provisions of Neb.Rev.Stat. §§ 23-201 et seq. (Reissue 1991) which involves a Board of County Supervisors elected by supervisor districts rather than a Board of County Commissioners. Under Section 23-269, the county supervisors in a township organization have a mandatory duty to redistrict and change the boundaries of county supervisor districts when the state and federal census indicates that the population among the several districts in the county has become unequal. State ex rel. Rowe v. Emanuel, 142 Neb. 583, 7 N.W.2d 156 (1942). See Neb.Rev.Stat. §32-1057 (Supp. 1991). In your opinion request, you indicate that a question has arisen as to when the county supervisors in a particular county start representing their new districts after a redistricting realignment: "[i]s it immediately after the redistricting (January 1992) or after the next election of the supervisors (November 1994 for the term commencing in January 1995)?" You also indicate that the purpose of your opinion request is to determine whether it is necessary to introduce "clarifying legislation" as to when the supervisors commence representing their new districts. While there do not appear to be any statutes directly on point concerning your question, there is at least some authority for the proposition that county supervisors begin representing their new districts immediately upon passage of the redistricting resolution. Whether that situation warrants "clarifying legislation" is, of course, for you to decide.

L. Jay Bartel
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Linda L. Willard

Section 23-268 provides that county supervisors in a township form of county government shall hold office for a term of four years, and until a successor is elected and qualified. That statute also provides that a supervisor must generally reside in the district in which he or she holds office. Section 23-269, the section at issue dealing with redistricting, states, in relevant part:

> The supervisor districts may be changed after each state and federal census if it appears from an examination that the population has become unequal among the several districts....Those counties under township organization may change their procedures for electing members to their governing board to at large or from at large to district following the provisions of section 32-1058.

There do not appear to be any Nebraska statutes which specifically set out when the changes brought about by a redistricting of county supervisor districts take effect. Nor are there any Nebraska cases which deal specifically with that issue. However, in State ex rel. Connolly v. Haverly, 62 Neb. 767, 87 N.W. 959 (1901), the Nebraska Supreme Court indicated that alterations in district boundary lines as a result of redistricting did not have the effect of depriving a county commissioner then holding office from exercising his duties for the full term for which he was elected even though the change in district boundary lines as a result of redistricting placed that commissioner in a different district. The commissioner continued to represent his original numbered district albeit he was a resident of another district as a result of redistricting. While the Haverly case concerned county commissioners, we believe the same analysis can be made for county supervisors. Therefore, when redistricting occurs, county supervisors serving the remainder of their term continue to serve and to represent their same numbered district as before. We earlier said as much in Report of the Attorney General, 1963-1964, No. 186 at 319.

As a result, if a county supervisor served Supervisor District No. 1 prior to redistricting, he or she would continue to serve District No. 1 after redistricting, assuming there is time remaining in his or her term of office, and assuming that the office is not somehow otherwise vacated. While this result seems clear, you have asked the additional question of when does the supervisor representing District No. 1 begin to represent any new or different geographic portions of his or her district. There is some indication that the county redistricting plan goes into effect immediately upon passage of the redistricting resolution.

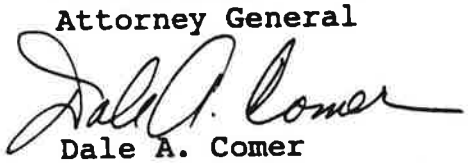
As we indicated previously, there are no Nebraska statutes or cases which deal specifically with this issue. However, there is

authority which indicates that, absent contrary statutory provisions, legislative acts or orders of a county board generally are effective as soon as they become law. 20 C.J.S. Counties §93. Consequently, since there do not appear to be contrary statutes with respect to the question you raised, we believe that a redistricting plan for county supervisors would become effective upon proper passage of a redistricting resolution by the county board of supervisors. In the example we gave earlier, the county supervisor representing District No. 1 would begin representing the altered district upon passage of the redistricting resolution.

You posed your opinion request for the purpose of determining whether further legislation in this area is necessary. Obviously, since there are no statutes which require the result set out above, you may wish to make that result more certain by proposing legislation. Alternatively, if you wish a contrary result, further legislation might also be advisable.

Sincerely yours,

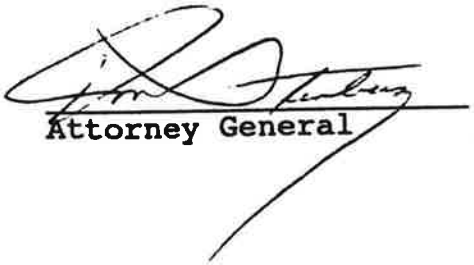
DON STENBERG
Attorney General



Dale A. Comer
Assistant Attorney General

cc: Patrick J. O'Donnell
Clerk of the Legislature

Approved:



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