



# North Dakota Legislative Council

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## **EFFECTS OF LEGISLATIVE REDISTRICTING ON CURRENT MEMBERS OF THE LEGISLATIVE ASSEMBLY**

This memorandum addresses whether a member of the Legislative Assembly is precluded from serving in a district in which the member no longer resides due to legislative redistricting.

### **REDISTRICTING OF THE LEGISLATIVE ASSEMBLY**

Under Section 2 of Article IV of the Constitution of North Dakota, the Legislative Assembly is required to establish new legislative districts after each decennial census. Section 2 also provides every elector in the state must be equal to every other elector in the power to cast ballots for legislative candidates. This provision is analogous to the federal one person one vote principle.

### **LEGISLATIVE RESIDENCY REQUIREMENTS**

Section 5 of Article IV of the Constitution of North Dakota requires each individual elected or appointed to the Legislative Assembly to be, on the day of the election or appointment, a qualified elector in the district from which the member was selected and must have been a resident of the state for 1 year immediately before that election. Section 5 further provides an individual may not serve in the Legislative Assembly unless the individual lives in the district from which the individual is selected.

### **TRUNCATING LEGISLATIVE TERMS AS THE RESULT OF REDISTRICTING**

As a part of redistricting legislation over the last several decades, the Legislative Assembly has included within the redistricting legislation provisions which addressed situations in which multiple incumbents were placed within the same districts and situations in which members were moved into a different district. In some of the redistricting legislation over the last 4 decades, the Legislative Assembly also included provisions which required elections in districts that had a significant amount of new population, generally with new territory containing 20 or 25 percent of the total population of the district.

In 1992, the Attorney General issued an opinion indicating it was unconstitutional to truncate the term of a state senator as a result of implementing a redistricting plan. The Legislative Council responded with a counter opinion which analyzed federal and state judicial decisions which concluded a state legislature has the authority to reduce senatorial terms to effectuate a valid redistricting plan despite the constitutional requirement of 4-year terms. In July 2001, the Attorney General overruled the 1992 Attorney General opinion.

Although terms of incumbent legislators may be truncated as a result of implementation of a redistricting plan, the incumbent has been allowed to serve until December first following the next general election when the new district boundaries become fully effective.

### **CONCLUSION**

Pursuant to the plain language of Section 5 of Article IV of the Constitution of North Dakota, a member of the Legislative Assembly residing outside a district in which the member was elected to serve likely is disqualified from continuing to serve regardless of the reason the member no longer resides in the district. However, historically, the member has been allowed to serve until after the next general election at which a new member may be elected to serve the district.