



## Constitutionality of Appointed Election Commissioners Questioned in Attorney General's Opinion

Nebraska statutes requiring or authorizing the appointment of county election commissioners and chief deputies are considered constitutionally suspect pursuant to a September 24 Attorney General's [opinion](#). The opinion was requested by Senator Matt Hansen, who is considering introducing legislation that would make the offices of election commissioner and chief deputy election commissioner subject to a popular vote, rather than appointment by the Governor and county boards.

The opinion addressed two questions: (1) Whether election commissioners are considered county officers under the Nebraska Constitution, [Art. IX, Sec. 4](#); and (2) If election commissioners are county officers, does their appointment violate the Nebraska Constitution.

Pursuant to Art. XI, Sec. 4,

The Legislature shall provide by law for the election of such county and township officers as may be necessary and for the consolidation of county offices for two or more counties; Provided, that each of the counties affected may disapprove such consolidation by a majority vote in each of such counties.

Election statutes require election commissioners to be appointed by the Governor for a four-year term in counties with a population in excess of 100,000 inhabitants. [§ 32-207](#). The election commissioner must appoint a chief deputy election commissioner who is a member of a different party than the election commissioner. [§ 32-209](#). Currently, Douglas, Lancaster, and Sarpy counties are subject to these provisions.

In counties with 20,000 to 100,000 inhabitants, the county board may create the office of election commissioner. It shall appoint the election commissioner and may appoint a chief deputy of a different political party than the election commissioner. [§ 32-211](#). Buffalo, Cass, Hall, and Platte counties have appointed election commissioners.

In all counties without an election commissioner, the county clerk performs the duties of the election commissioner. [§ 32-218](#).

### Election Commissioners as County Officers

The Nebraska Supreme Court has discussed the characteristics of public office in several cases (citations omitted). These include the creation of the position by constitution or statute, a definite or fixed term of office, a required oath of office, and the ability to exercise an independence beyond that of employees. Other cases refer to duties that involve some exercise of a county's sovereign power.

Using these definitions, the opinion concluded that county election commissioners and chief deputy election commissioners are county officers. They take an oath of office and furnish a bond. Election commissioners are responsible for enforcement of the Election Act as it relates to their office and must adopt and promulgate rules and regulations regarding elections and voter registration in the county. Chief deputy election commissioners perform duties assigned by the election commissioner and, in the absence of the election commissioner, perform the duties of that office.

*Editor's Note: Legal Line is a feature that will periodically appear in NACO E-Line. This article has been prepared by Beth Ferrell of the NACO legal staff. Legal Line is not intended to serve as legal advice. Rather, it is published to alert readers to court decisions and legal or advisory matters important to county government. For a specific opinion on how the information contained in this article or that which will be discussed in future issues relates to your county, consult your county attorney or personal counsel.*