

**LETTER OPINION
2003-L-45**

October 14, 2003

Honorable Randy A. Schobinger
State Senator
PO Box 1215
Minot, ND 58702-1215

Dear Senator Schobinger:

Thank you for your October 13, 2003, e-mail raising several questions about filling the legislative vacancy in District 3. You state that local party officials are considering convening a district convention or caucus to fill the vacancy in place of holding a meeting of the executive committee of the district committee. You ask whether that proposal is lawful.

The procedure for filling a legislative vacancy is contained in N.D.C.C. § 16.1-13-10, which provides in pertinent part:

If a vacancy in the office of a member of the legislative assembly occurs, the county auditor of the county in which the former member resides or resided shall notify the chairman of the legislative council of the vacancy. . . . Upon receiving notification of a vacancy, the chairman of the legislative council shall notify the district committee of the political party that the former member represented in the district in which the vacancy exists. The district committee shall hold a meeting within twenty-one days after receiving the notification and select an individual to fill the vacancy.

N.D.C.C. § 16.1-13-10(1) (emphasis supplied).

At the outset, I would note that you refer to the executive committee of the district committee as being the body which would otherwise hold a meeting to fill a legislative vacancy. However, the executive committee, while selected from the district committee, has no statutory role in the filling of a legislative vacancy.¹ As originally drafted in 2001,

¹ Contrast this provision with other statutory provisions permitting the executive committee to fill a vacancy occurring in a party certificate of endorsement for a

Senate Bill No. 2230 (amending N.D.C.C. § 16.1-13-10) would have authorized the executive committee of the district committee to meet and select an individual to fill a vacancy; however, references to the executive committee were removed in amendments to Engrossed Senate Bill No. 2230. See Hearing on S.B. 2230 Before the House Comm. on the Judiciary, 2001 N.D. Leg. (Feb. 14).

“The primary goal in construing the meaning of a statute is to discover the intent of the Legislature. Northern X-Ray Company, Inc. v. Hanson, 542 N.W.2d 733, 735 (N.D. 1996). In seeking to determine legislative intent, courts will look first to the language of the statute. ‘If a statute’s language is clear and unambiguous, the legislative intent is presumed clear on the face of the statute.’ Id.” N.D.A.G. 2003-L-33.

As quoted above, N.D.C.C. § 16.1-13-10(1) clearly provides that it is the district committee that must meet within 21 days after receiving the notification and select an individual to fill the legislative vacancy. The district committee of the party consists of the “precinct committeemen of a party, selected as provided by this chapter, with any other persons provided for by the district committee’s bylaws and as the district committee designates.” N.D.C.C. § 16.1-03-07(1). The officers of a district committee include a chairman, vice chairman, secretary, and treasurer. Id. The district committee may select an executive committee consisting of five or more persons chosen from the district committee. Id. Section 1-02-14, N.D.C.C., provides that a statute “giving a joint authority to three or more public officers or other persons must be construed as giving such authority to a majority of them, unless it appears otherwise in the act giving the authority.”

Based on the foregoing and a plain reading of N.D.C.C. § 16.1-13-10(1), it is my opinion that it is a majority of the district committee that has the authority to meet and select an individual to fill a legislative vacancy; the vacancy may not be filled by a district convention or caucus since it is not the entity authorized by statute to fill legislative vacancies.

Nevertheless, it would be permissible to hold a district convention or caucus for the purpose of providing an advisory or straw vote to the district committee in order to aid the district committee² in making its selection to fill the vacancy. Cf. N.D.A.G. 97-L-153 (unauthorized initiated ordinance may constitute a straw vote or an advisory vote but would have no legal effect); N.D.A.G. 96-L-192 (board of county commissioners may seek

legislative district office at a primary election, or in the case where no endorsement has been made, and a vacancy occurs in a slate of candidates seeking party nomination by petition at a primary election. N.D.C.C. § 16.1-11-18(1) and (2).

² In fact, a district committee may want to obtain broad based input on its selection, especially in view of the possibility that the voters of the district may petition the Governor to call a special election on the vacancy following an appointment. See N.D.C.C. § 16.1-13-10(2).

nonbinding advisory opinion of its constituents in implementing a specific statutory authority given to the board by the Constitution or statute; however, board may not seek advisory opinion on matters not within its statutory or constitutional authority); N.D.A.G. 83-34 (city governing body may call special election for the purpose of obtaining an advisory vote by electors).

Finally, you ask whether the 10-day notice requirement contained in N.D.C.C. § 16.1-03-01(3) would apply to a caucus in selecting a person to fill a legislative vacancy. As noted above, convening a district convention or caucus could only be done for the purpose of rendering a straw or advisory vote and such a convention or caucus is not the body authorized by law to actually select a replacement legislator. Consequently, even if it is assumed the publishing requirements contained in N.D.C.C. § 16.1-03-01(3) apply to a district convention or caucus,³ the district convention or caucus would only be acting in an advisory capacity and no formal publication requirement would exist.

Sincerely,

Wayne Stenehjem
Attorney General

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³ Section 16.1-03-01, N.D.C.C., by its terms, applies to precinct caucuses, not to a district convention or caucus.