

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 96-F-22

Date issued: November 22, 1996

Requested by: Representative Bill Oban

- QUESTION PRESENTED -

Whether a statewide election recount authorized by N.D.C.C. § 16.1-16-01(4) must be held within seven days after the date the Secretary of State notifies county auditors to conduct recounts.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a statewide election recount authorized by N.D.C.C. § 16.1-16-01(4) must be held within seven days after the date the Secretary of State gives notice to the county auditors to conduct recounts.

- ANALYSIS -

N.D.C.C. § 16.1-16-01(4) provides, in part, as follows:

Within four days after the canvass of the votes by the state canvassing board in the case of congressional, state, district, or legislative elections, the secretary of state shall notify all the county auditors to conduct recounts as required by subsection 1 and, when a timely recount demand is received and it is in proper form, as required by subsection 2. The secretary of state shall fix the date of the recounts within seven days after giving notice that the auditor must conduct the recount.

(Emphasis supplied.)

The language in N.D.C.C. § 16.1-16-01(4) that "[t]he secretary of state shall fix the date of the recounts within seven days after giving notice that the auditor must conduct the recount" has been subject to two varying interpretations. One is that the Secretary of State has seven days to specify the date of an election recount after giving notice to the county auditors of a recount, but that the date

specified could occur beyond the seven-day period. The other interpretation is that the recount itself must be held within seven days after the Secretary of State gives notice to the county auditors.

A cardinal rule of statutory construction is that courts are to ascertain the intent of the Legislature. The Legislature's intent must be sought initially from the language of the statute. District 1 Republican Com. v. District 1 Democratic Com., 466 N.W.2d 820, 824 (N.D. 1991). If statutory language is clear and unambiguous, the legislative intent is presumed to be clear from the face of the statute. If, however, statutory language is ambiguous or of doubtful meaning, the courts may look to extrinsic aids to aid in interpreting the statute. Id. at 824-25.

"A statute is ambiguous if it is susceptible to differing but rational meanings." Rott v. Connecticut General Life Ins. Co., 478 N.W.2d 570, 573 (N.D. 1991). N.D.C.C. § 16.1-16-01(4) has been susceptible to differing but rational meanings and is therefore ambiguous.

In construing ambiguous statutes, courts are likewise required to ascertain the Legislature's intent in enacting the statute but may resort to extrinsic aids, such as legislative history and the object of the statute, to construe an ambiguous provision. Kallhoff v. North Dakota Workers' Compensation Bureau, 484 N.W.2d 510, 512 (N.D. 1992); Kroh v. American Family Ins., 487 N.W.2d 306, 308 (N.D. 1992).

N.D.C.C. § 1-02-39 provides:

If a statute is ambiguous, the court, in determining the intent of the legislation, may consider among other matters:

1. The object sought to be attained.
2. The circumstances under which the statute was enacted.
3. The legislative history.
4. Common law or former statutory provisions. . . .

The statutory language in question resulted from an amendment in the 1985 legislative session. See 1985 N.D. Sess. Laws ch. 249, § 11. Prior to the 1985 amendments, the provision used to read, "[t]he

secretary of state shall fix the date of statewide recounts. The date shall be within ten days after receipt of the recount demand." Id. Thus, under the version in effect prior to 1985, it was clear that the date of the statewide recount must occur within ten days after receipt of the recount demand. The present ambiguity arises because, following the 1985 amendments, the provision is subject to differing interpretations.

In this instance, the legislative history is helpful in clarifying the ambiguity. The sponsor of the bill appeared before the Senate Judiciary Committee and offered testimony regarding the purposes of the bill. The minutes reflected that the sponsor "stated that the second [purpose] is the time involved. . . . The recount period should be earlier." Hearing on SB 2259 Before Senate Judiciary Comm. 49th ND Leg. (January 28, 1985) (Statement of Senator Christensen).

Furthermore, the Deputy Secretary of State indicated support for amending the time for a recount and stated it would be an advantage to shorten the time period from the ten days allowed for a recount after the canvassing board meets. Hearing on SB 2259 Before the Senate Judiciary Comm. 49th ND Leg. (January 28, 1985) (Testimony of Bob Schaible).

The change in the time period was proposed to allow resolution of legislative races, which are recounted under this provision, to be resolved by recount prior to the legislative pre-session typically held in early December following an election. Senator Christensen gave an example from District 3 which demonstrated the need for a change. The recount had changed the result of an election; however, due to the timing of the recount the winner missed the pre-session. Hearing on SB 2259 Before Senate Judiciary Comm. 49th ND Leg. (January 28, 1985) (Statement of Senator Christensen). The result the 1985 amendment was enacted to avoid could occur even after the amendment if N.D.C.C. § 16.1-16-01(4) were interpreted to mean that only notice of the date specified for the recount was required to be provided within seven days.

The former statutory provision clearly indicated that the recount date must be within ten days after receipt of a recount demand and the legislative history indicates that one of the intended purposes of the amendments to this subsection was to shorten the recount period. With this background, application of the rules for interpreting ambiguities in statutes requires a conclusion that the Legislature intended that the date of the recount be within seven days after the date the Secretary of State notifies the county

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auditors to conduct recounts. To conclude otherwise would run counter to the expressed legislative intent of shortening the recount process.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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