

LETTER OPINION
97-L-122

August 7, 1997

Honorable Rex Byerly
State Representative
PO Box 968
Williston, ND 58802-0968

Honorable Earl Rennerfeldt
State Representative
District 1
1704 Rose Lane
Williston, ND 58801-4362

Dear Rep. Byerly and Rep. Rennerfeldt:

Thank you for your letters asking whether a school board has the authority to call a special election to fill a vacancy on the school board.

North Dakota Century Code (N.D.C.C.) section 15-29-06 provides, in part:

The school board has power to fill by appointment any vacancy which may occur on the board. . . . In the event that the school board fails to fill such vacancy within sixty days after notice of a vacancy has been filed with the county superintendent of schools, the county superintendent shall call a special election for the purpose of filling the vacancy.

Another state law provides: "In addition to the annual election, a special election may be held at any time, if approved by a resolution of the school board, for any purpose provided for by law." N.D.C.C. § 15-28-03(1).

When a general law and a special law are in conflict, "the special provision must prevail and must be construed as an exception to the general provision" N.D.C.C. § 1-02-07. N.D.C.C. § 15-29-06 is a special law that provides for the manner in which vacancies on a school board shall be filled. The statement in N.D.C.C. § 15-28-03 authorizing a school board to hold a special election at any time and for any purpose provided for by law if approved by a resolution is a general law. Thus, the special provision in N.D.C.C. § 15-29-06 prevails, and since that provision does not authorize a school board to call a special election for the purpose of filling a vacancy, the school board does not have that authority.

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In conclusion, it is my opinion that a vacancy on a school board must be filled in accordance with N.D.C.C. § 15-29-06, and the general provision in N.D.C.C. § 15-28-03 authorizing school boards to call special elections does not authorize a school board to call a special election to fill a vacancy on the school board. See Letter from Attorney General Nicholas J. Spaeth to Alton Koppang (July 25, 1989).

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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