

N.D.A.G. Letter to Meier (Jan. 20, 1987)

January 20, 1987

Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, ND 58505

Dear Secretary Meier:

Thank you for your letter of December 23, 1986, regarding the time frame for holding a special election.

As you note in your letter, N.D. Const. Art. III, §5, provides that a referred measure may be voted upon at a special statewide election called by the Governor. See Haugland v. Meier, 339 N.W.2d 100, 105 (N.D. 1983). However, the procedure for conducting a special election is not set forth in N.D. Const. Art. III.

The general procedure for conducting elections is set forth in N.D.C.C. Title 16.1. N.D.C.C. § 16.1-01-02 provides as follows:

16.1-01-02. APPLICABILITY OF PROVISIONS OF TITLE. The provision of this title shall govern all primary, general, and special statewide and legislative elections, and all other elections, unless otherwise provided by law. (Emphasis supplied.)

Therefore, the provisions of N.D.C.C. Title 16.1 apply to special statewide elections.

In reviewing the provisions of N.D.C.C. Title 16.1 as to the applicable statutes setting forth the time frame for conducting an election, the most relevant statute is N.D.C.C. § 16.1-01-07. The first sentence of the statute states as follows:

16.1-01-07. CONSTITUTIONAL AMENDMENTS AND OTHER QUESTIONS TO BE ADVERTISED -- NOTIFICATION BY SECRETARY OF STATE -- MANNER OF PUBLISHING. Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote, the secretary of state shall, not less than fifty days before the election, certify the amendment or other question to each county auditor and each auditor shall cause notice thereof to be included in the notice required by section 16.1-13-05.

Clearly, the minimum amount of time needed by law in order to hold a special election is fifty days pursuant to this statute. Where the special election is held to fill a state or district office, the minimum fifty-day requirement is also present. N.D.C.C. §§ 16.1-11-20,

16.1-12-05.

During the fifty-day time period before the holding of the election, other tasks must be accomplished. Election precincts must be designated by county and municipal officials. N.D.C.C. Ch. 16.1-04. The auditor must ensure that the absentee ballots are printed and available for distribution thirty days prior to the election. N.D.C.C. Ch. 16.1-07. Election supplies and equipment must be ordered and election officials must be appointed and trained. N.D.C.C. §§ 16.1-05-01, 16.1-05-03. Finally, the official notice of election along with the sample ballot must be published once each week for two weeks before the election. N.D.C.C. §§ 16.1-11-21, 16.1-13-05.

In summary, the minimum amount of time needed from the date the Governor decides to call the special election to the date the election is actually had is fifty days. Naturally, the beginning of the fifty days does not begin until the Governor has called for a special election following the determination of the Secretary of State as to the sufficiency of the Petition in question.

Sincerely,

Nicholas J. Spaeth

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