

N.D.A.G. Letter to Haskell (Feb. 10, 1986)

February 10, 1986

Mr. Bruce Haskell
Morton County
Assistant State's Attorney
P. O. Box 190
Mandan, ND 58554

Dear Mr. Haskell:

Thank you for your letter of January 9, 1986, regarding your investigation of the Flasher School District elections.

N.D.C.C. Ch. 16.1-07 governs absent voters ballots and absentee voting. The actual distribution of absentee ballots is strictly regulated pursuant to N.D.C.C. 16.1-07-08 which provides, in part, as follows:

16.1-07-08. DELIVERING BALLOTS - ENVELOPES
ACCOMPANYING - STATEMENT ON ENVELOPE - INABILITY OF
ELECTOR TO SIGN NAME.

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been prepared, the county auditor, auditor of the city, or clerk of the school district, as the case may be, shall send to such absent voter by mail, postage prepaid, one official ballot, or personally deliver said ballot to the applicant or his agent which agent may not, at that time be a candidate for any office to be voted upon by the absent voter; provided, that the agent signs his name before receiving the ballot and deposits with the auditor or clerk, as the case may be, authorization in writing from the applicant to receive such ballot or according to requirements hereinafter set forth for signature by mark. No person may receive compensation, including money, goods, or services, for acting as an agent for an elector, nor may a person act as an agent for more than four electors in any one election.

* * *

(Emphasis added.)

Therefore, candidates may not act as an agent and deliver absentee ballots for the election at which they are a candidate. According to the information accompanying your letter, candidates at the 1983 election were allegedly acting as agents and delivering absentee ballots in violation of N.D.C.C. 16.1-07-08(1). However, the two-year statute of limitations precludes you from filing criminal charges on the class A misdemeanor offense. See N.D.C.C. §§ 16.1-07-14, 29-04-03.

The distribution of application forms for absentee ballots is governed by N.D.C.C. §16.1-07-07. Pursuant to this provision of the law, the school district clerk may only distribute absentee ballot application forms to voters who request them.

In the instant investigation, it appears that the school district clerk allegedly acted contrary to law providing candidates with absentee ballot application forms to distribute to voters. However, the distribution of absentee voter applications by candidates at an election is not a prohibited activity. See generally N.D.C.C. Chs. 16.1-07 (Absentee Voting), 16.1-10 (Corrupt Practices), 12.1-14 (Criminal Election Violations), and N.D.C.C. 16.1-01-12 (Election Offenses), 15-49-01 (Violation of School Elections).

It is suggested by the investigative reports accompanying your letter that there is confusion over eligibility requirements for voting by absentee ballot. Individuals entitled to vote by absentee ballot are described in N.D.C.C. § 16.1-07-01 which provides, in part, as follows:

16.1-07-01. ABSENT VOTER - WHO MAY VOTE.

1. Any qualified elector of this state who, at any general, special, or primary state election, at any county election, or at any city or school district election, is absent from the city, township, or consolidated voting precinct in which he is an elector, is in the armed forces of the United States, is in the merchant marine of the United States, is physically disabled, or is a United States citizen living outside the United States who resided in this state immediately prior to his departure from the United States, may vote an absent voter's ballot at that election.

* * *

Pursuant to N.D.C.C. § 16.1-07-14 any person who violates this provision of the law is guilty of a class A misdemeanor.

The focus of your continuing investigation appears to center on whether candidates at the 1985 Flasher School District election acted contrary to N.D.C.C. § 16.1-07-08(1) and served as agents to distribute absentee ballots. It would appear that this issue could be resolved by examining the school district clerk's records.

Pursuant to N.D.C.C. §§16.1-07-08(1), 16.1-05-04, and 16.1-15-06, the clerk should have

the following documents.

1. Written authorization from absent voters permitting named individuals to serve as agents for delivery of the absentee ballots;
2. A document signed by the agents acknowledging receipt of the absentee ballots;
3. Pollbooks showing the names and addresses of persons who voted at the election.

If items number 1 and 2 have been lawfully destroyed, then continued investigation would be fruitless. Based on the results of your investigation and the continuing nature of the problem, it may be advisable to monitor future elections.

If you have further questions or are in need of assistance, you may wish to contact Craig Sinclair, Assistant Attorney General, Secretary of State's Office, State Capitol, Bismarck, North Dakota 58505, telephone 224-2900.

Sincerely,

Nicholas J. Spaeth

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