

N.D.A.G. Letter to Melby (May 23, 1986)

May 23, 1986

Honorable Arthur Melby
District 14
House of Representatives
1392 Elm Avenue
Harvey, ND 58341

Dear Representative Melby:

Thank you for your letter of May 10, 1986, regarding Glen Johnson filing a petition of nomination for the office of Wells County sheriff one day after the April 16, 1986, filing deadline.

The deadline for filing a petition of nomination for county sheriff is set forth in N.D.C.C. § 16.1-11-11. Pursuant to this provision of the law, Mr. Johnson's petition of nomination should have been filed before 4 p.m. on April 16 which was the 55th day prior to the June 10 primary election. See also N.D.C.C. §16.1-11-01 (Date of Primary Election).

As a general rule, the requirement that a petition be filed by a candidate before 4 p.m. on the last day is mandatory. See State ex rel., Campbell v. Torgerson, 220 N.W. 834 (N.D. 1928). However, a late filing has been excused in a few cases where a governmental official having authority over nominating petitions rendered an erroneous opinion as to the proper final filing date and the prospective candidate relied upon the opinion. See 25 Am. Jur.2d Elections, 140 (1966) and State ex rel., Englert v. Meier, 115 N.W.2d 574 (N.D. 1962).

In the instant case, certain facts are not in dispute. Clearly, the filing deadline was April 16, 1986, and Mr. Johnson attempted to file his petition on April 17. The reason Mr. Johnson filed his petition on April 17 was because he relied on a January 29, 1986, front page newspaper article which appeared in The Herald Press. In the article, the filing deadline for all county offices was listed as April 17.

However, beyond that point, the facts are in dispute. The January 29 article in The Herald Press does not attribute the April 17 filing deadline to the county auditor. In other words, it is uncertain as to where the newspaper obtained its information. Moreover, the Wells County auditor asserts that he never supplied the information to the newspaper and that he had not read the article since it dealt with municipal elections and the information pertaining to county elections was buried in it.

Therefore, it is my opinion that where a candidate relies on an erroneous filing deadline provided by a county auditor, the candidate's late filing of a petition of nomination should be accepted. However, with respect to the instant case, I render no opinion because the

facts are in dispute. This matter is a factual question which can only be determined by the Wells County auditor or by a court of law in reviewing the particular facts and circumstances of this matter.

Sincerely,

Nicholas J. Spaeth

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cc: Vincent A. LaQua
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