

## **N.D.A.G. Letter to Streibel (Aug. 14, 1991)**

August 14, 1991

Senator Bryce Streibel  
District 14  
226 Second Street N  
Fessenden, ND 58438

Dear Senator Streibel:

Thank you for your July 22, 1991, letter concerning the rural-urban split of school board members in your school district. You question whether a city resident would be eligible to hold office on the school board if that city resident was elected by write-in votes to a seat on the board required to be held by a rural resident.

School board candidates get on the ballot by filing a statement with the school district business manager setting forth the candidate's name and the position for which the person is a candidate. The ballot ultimately prepared for the election must include blank spaces for write-ins. The use of stickers to vote for persons in school board elections is also authorized. N.D.C.C. § 15-28-09. [This section formerly contained a provision for identifying candidates for rural seats as "rural candidates", where some members were required by law to reside in rural areas. However, this latter provision was repealed in 1983. 1983 N.D. Sess. Laws ch. 209.]

Under certain circumstances, school board membership must include rural residents. If the taxable valuation of rural property in the district exceeds that of urban property in the district, then a majority of school board members must reside in rural areas. N.D.C.C. § 15-28-02. You state that this is the situation in your school district.

After the election, the school board canvasses the election returns and must declare a result within three days of the election. The person receiving the highest number of votes for each office in the district must be declared elected. N.D.C.C. § 15-47-06. The term of office of a school board member begins in July after the election. N.D.C.C. § 15-28-03(1).

The answer to your question comes primarily from our Supreme Court's opinion in the case of Stearns v. Twin Butte Public School District No. 1, 185 N.W.2d 641 (N.D. 1971). Stearns dealt with canvassing election results and certifying a winner based on a rural-urban split in school board membership under N.D.C.C. § 15-28-02. The school board in Stearns canvassed the election results, but declared the person with the second highest vote total elected because the person with the highest vote total did not live in a rural area of the district as the board believed he should.

The Supreme Court in Stearns held that this action by the school board was unlawful and upheld the district court's grant of a writ of mandamus ordering the board to issue a

certificate of election to the person with the highest number of votes. The Supreme Court said, citing N.D.C.C. § 15-47-06:

"Thus, when it was determined that Stearns had received the highest number of votes for the office in question, the canvassing board had no alternative but to perform its ministerial duty and issue to him a certificate of election. It had no authority to set itself up as judge of the qualifications of the candidates and issue a certificate to Mrnak on the ground that Stearns was not qualified to hold the office."

185 N.W.2d at 644.

It is my opinion that a school board must canvass the votes and declare a result under N.D.C.C. § 15-47-06, regardless of what the school board believes about the residency of the highest vote getter and the requirement of a rural-urban split of board members.

Under the scenario you relate, a city resident, if elected, would not be eligible to actually serve on the school board at the commencement of the term in July, because of the provisions of N.D.C.C. § 15-28-02 on rural residency. Any party or parties with a special interest may commence a lawsuit in the nature of a quo warranto proceeding under N.D.C.C. ch. 32-13 to prevent an elected school board member who does not meet the residency requirements from actually serving on the board when the term commences. A proceeding under that chapter tests the right of the elected persons to actually hold the office. If the court declares the person to be ineligible to hold the office, a vacancy would exist. The school board would then be required to fill that vacancy by appointment under N.D.C.C. § 15-29-06. In default of an appointment by the school board under that section within 60 days after notice of a vacancy is filed with the county superintendent of the schools, the county superintendent shall call a special election to fill the vacancy.

Sincerely,

Nicholas J. Spaeth

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