

N.D.A.G. Letter to Myers (Dec. 18, 1986)

December 18, 1986

Mr. Earle R. Myers, Jr.
Richland County State's Attorney
Law Enforcement Center
Wahpeton, ND 58075

Dear Mr. Myers:

Thank you for your letter of November 17, 1986, regarding the statutory provisions governing school election procedures. I understand the confusion which occurs in attempting to determine which election laws apply to school elections. Generally speaking, those election laws found in N.D.C.C. Title 16.1 apply to school elections except as otherwise provided for in N.D.C.C. Title 15 or Chs. 21-03 and 40-21.

The procedure for conducting school elections is set forth in N.D.C.C. §15-47-06 which provides, in pertinent part, as follows:

15-47-06. ELECTION PROCEDURE IN ALL SCHOOL DISTRICTS -- CANVASS OF BOARDS -- TIE VOTE --ABSENT VOTERS. An election in a public school district, except as otherwise provided in this title, shall be conducted and the votes shall be canvassed in the manner provided by the laws of this state for the election of county officers. . . . (Emphasis supplied.)

Except as otherwise provided for in N.D.C.C. Title 15, school elections are to be conducted and the votes canvassed in the same manner that county officers are elected. County officers are elected pursuant to the provisions of N.D.C.C. Title 16.1. See N.D.C.C. §16.1-01-02.

Regular and special school elections are governed by the provisions of N.D.C.C. Ch. 15-28. While providing general guidelines for conducting regular and special elections, this provision of law makes reference to a number of specific provisions in N.D.C.C. Title 16.1. See N.D.C.C. §15-28-10.

Thus, in answer to your question, regular and special elections are governed by the provisions of N.D.C.C. Chs. 15-28 and N.D.C.C. Title 16.1. However, N.D.C.C. Title 16.1 applies only to the extent that it is not in conflict with the specific school election provisions of N.D.C.C. Ch. 15-28.

N.D.C.C. Ch. 15-28 fails to address the method to be followed for canvassing votes. Therefore, the votes for regular and special school elections are canvassed pursuant to the provisions of N.D.C.C. §15-47-06 and N.D.C.C. Ch. 16.1-15. See page 14 of the enclosed "1986 Election Officials Manual."

On the other hand, the procedures for conducting a school bond election are found in N.D.C.C. Ch. 21-03 which requires school bond issues to be conducted and the votes canvassed in the same manner as municipal elections. N.D.C.C. §21-03-11.

The municipal election provisions are set forth in N.D.C.C. Ch. 40-21. However, N.D.C.C. §40-21-13 provides, in part:

40-21-13. MUNICIPAL ELECTIONS TO BE GOVERNED BY RULES APPLICABLE TO COUNTY ELECTIONS -- ABSENT VOTING. The manner of conducting, voting at, keeping poll lists, and canvassing votes at municipal elections, and contests of the results of such elections shall be governed, as nearly as possible and except as otherwise provided in this chapter, by the laws of this state applicable to elections and contests in the case of county officers. . . . (Emphasis supplied.)

As previously discussed, county officers are elected pursuant to the provisions of N.D.C.C. Title 16.1. Therefore, except as otherwise provided for in N.D.C.C. Chs. 21-03 and 40-21, school bond elections are governed by the provisions of N.D.C.C. Title 16.1.

N.D.C.C. Chs. 21-03 and 40-21 fail to address the method for canvassing school bond issue votes. Therefore, votes in a school bond election are canvassed pursuant to the provisions of N.D.C.C. Ch. 16.1-15.

N.D.C.C. Chs. 15-28 (school elections), 21-03 (bond election procedures), and 40-21 (municipal elections) do not address the issue of the form of the poll books for school elections. Therefore, the poll books for all school elections including school bond elections are governed by the provisions of N.D.C.C. Title 16.1. The poll books used in any school election should contain the addresses of the voters. See N.D.C.C. §§16.1-05-04(3) and 16.1-06-21.

In regard to the poll books used at your recent school bond issue election, it is my understanding that the poll books were obtained from the Department of Public Instruction and that the format of the poll books failed to provide for the addresses of the voters. It is my further understanding that the Department of Public Instruction is in the process of revising the poll books so that they will conform to the voter address requirements of N.D.C.C. §16.1-05-04(3).

Obviously, the purpose of a voter giving his or her address to the precinct election board is to aid the election officials in their determination of whether the individual is a qualified voter of the precinct. See N.D.C.C. §16.1-05-06.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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Enclosure