

OPINION
66-464

January 27, 1966 (OPINION)

Mr. Vernon S. Cooper

Secretary - Treasurer

Garrison Diversion Conservancy District

RE: Waters - Irrigation District - Procedure on Election
for Contract Approval

This is in response to your letter in which you ask for an opinion as to the procedure that should be followed in conducting the canvass of the election returns on elections pertaining to the approval or disapproval of repayment contracts between the irrigation districts and the United States. You state that you are interested particularly in the time that such canvass must be conducted.

Section 61-07-31 of the North Dakota Century Code substantially provides that if a contract provides for payments extending for a period of more than one year from the date of entering such contract, the question shall be submitted to the legal voters of the district at a general election or at a special election, for the approval or disapproval of the contract. It then specifically provides as follows:

If a special election is called for such purpose, the notice of election, the conduct of said election, and the canvass of the votes so far as practicable, shall be the same as in an election held for the purpose of voting upon the issuance of bonds. * * *."

Emphasis supplied.

The same section also provides that the notice of the election need not give the entire contract but shall be sufficient if it shall state the substance of the proposed contract.

The nature of the contract would, to a great extent, determine what must be contained in the notice. The question should be intelligently stated on the ballot so that the electorate will know that by voting "yes" they are voting in favor of the contract, and by voting "no" they are voting against the contract. The form set out in section 61-07-31 should be adopted. The statutory procedure set up for the issuance of bonds by irrigation districts can be found in chapter 61-08 of the North Dakota Century Code.

With reference to your specific question as to the time when the canvass is to be conducted, we note that section 61-08-02 pertaining to the procedure to be followed on the issuance of bonds, in part, provides as follows: "* * * Such election shall be conducted and the

returns thereof shall be made and canvassed as in the case of an election of members of the board of directors of the district." To determine the manner in which those elections are held and returns canvassed, we must refer to chapter 61-06.

Section 61-06-10 provides that the notice of the election shall be given not less than fifteen days before the election. It further requires that notice of election be posed in at least three public places in each division of the district. The notice, amongst other things, must also state that the polls will be open from one o'clock p.m. until five o'clock p.m. of that day. This section further provides that failure to give the notice shall not invalidate the election of a director elected at the regular election. Presumably the Legislature is of the opinion that matters coming on at the regular election, to some degree, have notice because, by law, it has provided that the regular elections of irrigation districts shall be on the first Tuesday of February in each year (section 61-06-09). However, by inference the notice for a special election is of prime importance. In addition to the notice, it is observed that section 61-06-15 requires that the polls be open at one o'clock p.m. and kept open until five o'clock p.m. of the same day.

As to the canvass of ballots, section 61-06-16 provides that immediately after the polls are closed the election board shall properly open and proceed to canvass the ballots cast and declare the results of such canvass. The chairman of the board is required to securely wrap all lists, tally sheets, oaths and affirmations and other documents relating to the election and deliver same to the secretary of the board of directors of the district.

Section 61-06-18 provides that the board of directors of the district shall meet at its usual place of meeting on the first Tuesday of March after each election and canvass the returns. It further provides that if the returns have not all been received they may postpone the meeting from day to day until the returns are all in. The canvass must be made in public by opening the returns and ascertaining the vote for each person and declaring the result thereof; and also ascertaining the vote for and against each and any other question or proposition voted upon, and declare the result thereof.

The provisions of section 61-06-18 fixing the date of canvassing the returns to be the first Tuesday in March is apparently the direct result of having the regular election date set by statute, which is the first Tuesday in February of each year. It is quite obvious that the reference in section 61-08-02, set out earlier herein, is only as to the manner in which the votes are canvassed and not as to the specific time, such as the first Tuesday in March. This is particularly true where the election is a special election. If the election is held in conjunction with a general election, the date of which is specified by statute, the time for canvass as provided for in section 61-06-18 would apply, but where the election is a special election the same procedure is to be followed but it is not necessary that the canvass of the votes be held up until the first Tuesday in March. The purpose of setting a date on which the votes must be canvassed is to set a time limit. As to regular elections, the time element is thirty days.

It is therefore our opinion that special elections held for the approval or disapproval of repayment contracts must, follow the following procedures:

1. Notice of the election must be fifteen days before the election and notices must be posted in at least three conspicuous places within the district and at least one notice in the newspaper published in the county where the office of the board, of directors is kept. The posting and publication must be at least fifteen days before the date of the election. It must also state the place of the election and the date and hour when the polling place will be open.
2. The substantial material of the contract under consideration must be set forth in the notice.
3. The results of the election must be canvassed immediately and all election material must be securely bound and delivered to the secretary of the board of directors. Within thirty days or as soon as all returns are in the board shall canvass the returns of the votes cast and declare the results of the election. The secretary shall enter the results of the election in his records.

HELGI JOHANNESON

Attorney General