

LETTER OPINION
93-L-169

June 3, 1993

Honorable Al Jaeger
Secretary of State
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0500

Dear Secretary Jaeger:

Thank you for your May 4, 1993, letter requesting my opinion on the meaning of the phrase "general election" in N.D.C.C. ? 44-08-21.

N.D.C.C. ? 44-08-21 provides, in part:

An elected official of a political subdivision . . . is subject to recall . . . by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent general election.

Your question is whether the phrase "general election" refers to the statewide general election or the most recent general election of the particular political subdivision. You ask this question because there is some difficulty in determining the number of voters who have voted in some political subdivisions if the calculation is to be based upon the voters who participated in the statewide general election. This difficulty arises because the precincts in a political subdivision for the state general election may differ from the precincts for the political subdivision general election. This problem is particularly troublesome with regard to school districts whose boundaries may not follow the boundaries of counties and cities and may include areas in more than one county or outside the boundaries of a township or city.

N.D.C.C. ? 44-08-21 provides for the recall of political subdivision officials. For that reason, prior to its amendment by House Bill 1256 during the 1991 session, N.D.C.C. ? 44-08-21 provided that the percentage of voters who were required to sign a

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recall petition was to be based upon the "voters voting in the political subdivision at the last election that the office of the official sought to be recalled was on the ballot." The change from that language to the present language raises a question as to the meaning of the phrase "general election." In N.D.C.C. ? 44-08-21, the phrase "general election" is ambiguous because it could refer to the "general election" of the political subdivision or the "general election" of the state.

In construing statutory language which is ambiguous, consideration should be given to the object the Legislature sought to attain, former statutory provisions, the legislative history of the enactment, and the consequences of a particular construction. N.D.C.C. ? 1-02-39(1),(2), (3),(4), and (5).

The legislative history of House Bill 1256, which amended N.D.C.C. ? 44-08-21 to require the signatures of 25 percent of those voting at the last general election, indicates that the proponents of the amendment were interested in making the recall process more difficult. One option offered was to raise the number of signatures required. During the conversation on this option, Representative Kretschmar asked whether an amendment "that would have a percentage of the people in that political subdivision who voted at the previous general election" would be acceptable to the bill's proponents. Hearing on H. 1256 Before the House Political Subdivisions Comm., 52nd N.D. Leg. (January 24, 1991) (Statement of Rep. Kretschmar). In response to that question, Gary Thune stated that "they would be amenable to any amendment that would tighten" up the recall process. Id. (Statement of Gary Thune.)

Subsequent to that conversation, the language requiring 25 percent of the voters from the most recent general election to sign the petition was amended into the bill. Thus, the legislative intent and the object of the legislators and the bill's proponents was to increase the number of voters required to sign recall petitions. It is apparent from the conversation that the committee believed that the number of voters participating in a statewide general election would be greater than the number of voters participating in a local political subdivision's general election. Therefore, the legislative history and the object the Legislature

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sought to attain in amending this statute would be met by construing the phrase "general election" as meaning the statewide general election.

In addition, amendment of the former language, which imposed a standard of measurement of signatures of 25 percent of the voters who voted in the political subdivision where the office was last voted upon, indicates a legislative intent to change the standard of measurement. To construe the phrase "general election" as it now exists in N.D.C.C. ? 44-08-21 to mean a political subdivision's general election would mean that the Legislature had not implemented a standard different from the previous standard of measurement for signatures.

A consequence of construing the statute to require the signatures of 25 percent of the voters in the last statewide general election may be that in some political subdivisions the calculation of the number of signatures required will be difficult. However, another consequence of that construction is that it will be more difficult to recall political subdivision officials. Because that was the purported purpose of the amendment, however, it is my opinion that the phrase "general election" in N.D.C.C. ? 44-08-21 means the state general election.

Because of the difficulty of calculating the 25% of persons participating in the state general election, you may wish to approach the 1995 Legislature with an amendment addressing recalls in those political subdivisions where the calculation of the 25 percent is difficult. For the present, local political subdivisions which cannot calculate the 25% of the general election vote should use their best efforts to determine the number of persons voting in the most recent state general election. In doing so, the poll books will be useful because they contain the names and addresses of persons voting in the state general election. The addresses may be used to place persons within the boundaries of the precinct of the political subdivision and thereby, arrive at the number of voters who voted in the last state general election.

I trust this answers your question. If you have other concerns regarding this matter, please contact me again.

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Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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