

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 94-F-22

Date issued: July 28, 1994

Requested by: Secretary of State Alvin A. Jaeger

- QUESTION PRESENTED -

Whether a newspaper may be elected the official newspaper of a county by receiving a sufficient number of write-in votes in the general election.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a newspaper may not be elected the official newspaper of a county by receiving a sufficient number of write-in votes in the general election.

- ANALYSIS -

The procedures for electing a newspaper as the official newspaper of a county are contained in North Dakota Century Code (N.D.C.C.) ch. 46-06. N.D.C.C. ? 46-06-03 describes the procedure by which a newspaper may have its name placed on a primary election ballot. The names of the two newspapers receiving the highest number of votes in a primary election are placed on the general election ballot. N.D.C.C. ? 46-06-05. The newspaper receiving the highest number of votes at the general election must be declared elected. N.D.C.C. ? 46-06-06. N.D.C.C. ch. 46-06 contains no provision respecting write-in votes.

In 1956, the Attorney General's office issued an opinion determining that North Dakota statutes do not authorize a newspaper to be nominated as official county newspaper by receiving write-in votes at a primary election. 1956 N.D. Op. Att'y Gen. 104, 105. The opinion concluded that the newspaper receiving write-in votes in the primary election could not be placed on the general election ballot regardless of the number of write-in votes the newspaper received. Id. at 105. The

1956 opinion provides in part:

Section 16-0428, dealing with nominations by stickers and write-ins, refers only to "a candidate" who may be nominated in such a manner. Chapter 16-04 in its entirety suggests that the "candidate"--whom we feel is the same candidate contemplated in the write-in law--is a person who is running for state, county or other office. There is no proviso for nomination of an official newspaper by write-ins.

Id. at 105. This long-standing opinion has not been subsequently modified or disavowed by this office. Given the substantial similarity between the laws governing primaries when the 1956 opinion was issued and current laws governing write-in votes in primary elections, the 1956 opinion remains the opinion of this office.

The question at issue is whether a newspaper may be elected official county newspaper by receiving a sufficient number of write-in votes in the general election. Two state laws address the writing of names of persons on a ballot in a general election:

16.1-13-25. Elector may write or paste name on ballot - Counting. The provisions of this title do not prevent any elector from writing or pasting on the ballot or ballot envelope the name of any person for whom he desires to vote, and such vote must be counted the same as if printed on the ballot and marked by the elector.

16.1-13-26. Name written or pasted on ballot evidence of vote without marking "x". If a name has been written or pasted opposite an office to be voted for, it must be deemed sufficient evidence that the person depositing the ballot or ballot envelope intended to vote for the person whose name is written or pasted thereon

N.D.C.C. ?? 16.1-13-25, 16.1-13-26 (emphasis supplied). In my opinion, these provisions refer to persons running for state, county, or other public office. In my judgment, an officially designated county newspaper does not hold a public office. See generally Ransom County Farmers' Press v. Lisbon Free Press, 194 N.W. 892, 895-6 (N.D. 1923). An election to

ATTORNEY GENERAL'S OPINION 94-22
July 28, 1994

determine what newspaper shall be the official county newspaper is more in the nature of an election to determine a proposition or measure. Id. Thus, the write-in provisions in N.D.C.C. ch. 16.1-13 do not authorize the write-in of a newspaper.

In conclusion, it is my opinion that a newspaper may not be elected the official newspaper of a county by receiving a sufficient number of write-in votes in the general election.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ? 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: Leah Ann Schneider, Assistant Attorney General
John J. Fox, Assistant Attorney General

jfl