**LETTER OPINION**
**94-L-231**

August 26, 1994

Honorable Alvin A. Jaeger
Secretary of State
600 East Boulevard Avenue
Bismarck, ND 58505-0500

Dear Secretary of State Jaeger:

Thank you for your August 22, 1994, letter concerning the filing of a vacancy in a legislative district. You indicated that a vacancy has occurred by the death of a candidate nominated at the primary election and the district executive committee is considering naming a candidate who was defeated for the nomination in the primary election. The vacancy will be filled pursuant to North Dakota Century Code (N.D.C.C.) ? 16.1-11-18(4) which provides, in part:

> If a vacancy occurs in a slate of candidates after the candidates have been nominated at the primary election, the proper state or district executive committee may fill any vacancy by filing a certificate of nomination with the secretary of state. . . . When such a certificate is filed, the secretary of state, in certifying the nomination to the various auditors, shall insert the name of the person who has been nominated to fill the vacancy in place of the original nominee. If the secretary of state already has forwarded his certificate, he forthwith shall certify to the auditor of the proper county or counties the name and post-office address of the person nominated to fill a vacancy, the office he is nominated for, the party or political principle he represents, and the name of the person for whom the nominee is substituted. . . .

You made note of N.D.C.C. ? 16.1-13-06 which provides:

> **Defeated primary candidate ineligible to have name printed on general ballot.** A person who was a candidate for nomination by any party at any primary election in any year and who was defeated for the nomination may not have his or her name printed upon the official ballot at the ensuing general election for the same office.

Both N.D.C.C. ?? 16.1-11-18 and 16.1-13-06 were originally part of the same bill and passed in the same session. See 1981 N.D. Sess. Laws ch. 241, ?? 8 and 10.

As you indicated in your letter, the question of whether the Secretary of State may accept a certificate of nomination naming a defeated primary candidate for placement on the general election ballot has been addressed in a previous opinion issued by this office. See 1970 N.D. Op. Att'y Gen. 138. (A copy is enclosed for your information.) In the circumstances addressed in that opinion, a vacancy occurred in a legislative district race as the result of the resignation of the person who received the nomination at the primary election. A certificate of nomination was filed with the Secretary of State, apparently pursuant to the predecessor statute to N.D.C.C. ? 16.1-11-18 (former N.D.C.C. ? 16-04-21(4)). The individual named in the certificate of nomination had been defeated in the primary election.

The question arose at that time because of then-existing N.D.C.C. ? 16-06-06, the predecessor statute to N.D.C.C. ? 16.1-13-06. These predecessor statutes are substantially similar to the present versions. The 1970 opinion concluded that the predecessor statute, N.D.C.C. ? 16-06-06, prevented the defeated nominee's name from being placed on the general election ballot. While the opinion further noted that the defeated primary election candidate remained eligible for the office, the clear and unambiguous language of N.D.C.C. ? 16-06-06 prevented his name from being placed on the general election ballot. The opinion indicated that the individual could be elected by use of write-ins or stickers.

The 1970 opinion has been in effect for twenty-four years and the Legislature has not altered the language of the statutes to overrule or counter the effect of that opinion. The 1970 opinion continues to represent the opinion of this office on the question you raise. N.D.C.C. ? 16.1-13-06 which prevents a defeated primary election candidate from having his or her name printed on the general election ballot is clear and unambiguous, like its predecessor. When statutory language is clear and unambiguous, the language cannot

be disregarded under the pretext of pursuing the legislative intent because the intent is presumed to be clear from the face of the statute. District One Republican Comm. v. District One Democrat Comm., 466 N.W.2d 820 (N.D. 1991). Only when statutory language is ambiguous or of doubtful meaning may courts resort to extrinsic aids to interpret it. Id. The North Dakota Supreme Court in Little v. Tracy noted the following:

> It must be presumed that the Legislature intended all that it said, and that it said all that it intended to say. The Legislature must be presumed to have meant what it has plainly expressed. It must be presumed, also, that it made no mistake in expressing its purpose and intent. Where the language of a statute is plain and unambiguous, the "court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it."
>
> Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993) (quoting City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940)).

While I appreciate the policy arguments made in your letter, the plain language of N.D.C.C. ? 16.1-13-06 cannot be disregarded. Consequently, it is my opinion that you may not accept a certificate of nomination to place on the general election ballot the name of a defeated primary election candidate.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jjf/pg
Enclosure