

N.D.A.G. Letter to Neugebauer (Jan. 7, 1988)

January 7, 1988

Mr. Brian D. Neugebauer
West Fargo City Attorney
Ohnstad Twichell
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901 13th Avenue East
P.O. Box 458
West Fargo, ND 58078-0458

Dear Mr. Neugebauer:

Thank you for your letter of October 23, 1987, requesting an interpretation of N.D.C.C. § 40-53.2-02. This statute provides a procedure whereby the question of consolidation of cities may be placed before the voters. I apologize for the delay in responding to you.

According to N.D.C.C. § 40-53.2-02, the issue of whether a municipal consolidation review commission should be appointed to begin the city consolidation process must be submitted to the electors of the city involved on the ballot "at the next general election to be held in that city." Your letter states there is some dispute as to the specific election at which this question must be submitted to the voters. This issue is being raised because some persons have argued that the term "general election" refers to the next statewide general election held in November.

Your letter correctly points out that N.D.C.C. ch. 40-53.2 does not define "general election." But because the term is followed with the phrase "to be held in that city," the legislature has expressed its intent that the general election at which the consolidation issue is to be voted upon refers to any citywide election. Such election might be a citywide general election or a statewide general election.

Courts have defined "general election." Perhaps its broadest definition is that of New York. "Any election at which there is a general and popular expression of the public will, whether that election be a state, county or city election, is a general election." Wing v. Ryan, 6 N.Y.S.2d 825, 829 (N.Y. App. Div. 1938), aff'd, 17 N.E.2d 133 (N.Y. Ct. App 1938) (mem.); see also Oster v. Village of Jordan, 248 N.Y.S.2d 328, 331 (N.Y. Sup. Ct. 1964). Nebraska has also adopted this broad definition. Allen v. Tobin, 51 N.W.2d 338, 342 (Neb. 1952). Other courts have said elections for a definite purpose and regularly recurring at fixed intervals without any other requirement than lapse of time are general elections. Hudson v. Cumard, 33 P.2d 591, 594 (Ariz. 1934); Eakle v. Bd. of Education, 125 S.E. 165, 168 (W. Va. 1924). The Michigan Supreme Court has said a "general election" is not confined to the biennial statewide November election, but includes municipal biennial election. Groesbeck v. Bolton, 173 N.W. 542, 545 (Mich. 1919). See also Benson v. Williams, 246 P.2d 1046, 1048 (N.M. 1952).

In light of these decisions and because the consolidation issue is to be put to the voters at the next general election "held in that city," it is my opinion that the voters are to be heard at the next citywide election, whether it be part of a statewide election or solely a citywide election.

Further support for this conclusion is found within N.D.C.C. ch. 40-21. In several statutes, the biennial municipal elections held in April are described as "general city elections." N.D.C.C. §§ 40-21-02, 40-21-03, 40-21-03.1. The fact that the Legislature has used the phrase "general city elections" in other statutes within N.D.C.C. Title 40 gives rise to the presumption that the Legislature intended a meaning other than "general election," the date of which is set forth by N.D.C.C. § 16.1-13-01, when it referred to "general election to be held in that city" in N.D.C.C. § 40-53.2-02.

Legislative intent as to the term "general election to be held in that city" is further shown by the last sentence of N.D.C.C. § 40-53.2-03. This statute discusses the municipal consolidation review commission consolidation plan. "Upon receiving a majority affirmative vote of the electors of each city, voting at a special election or any regular election, the review commission's recommended plan shall become effective on July first of the next year." (Emphasis supplied.) Clearly, the Legislature did not intend to require the question of consolidation to be voted upon by city electors only at a November general election.

In conclusion, it is my opinion that the question of consolidation must appear on the ballot at the next general city election to be held within that city as opposed to the general election held in the month of November during even-numbered years.

Sincerely,

Nicholas J. Spaeth

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