

N.D.A.G. Letter to Brendel (March 8, 1988)

March 8, 1988

Mr. John P. Brendel
Renville County State's Attorney
P.O. Box 398
Mohall, ND 58761

Dear Mr. Brendel:

Thank you for your letter of February 4, 1988, in which you ask whether residents of a school district who have signed an annexation petition may request that their names be withdrawn from the petition and whether the county committee may omit such petition signatures from consideration in the annexation proceedings.

In your letter you indicate that residents of a school district signed a petition relative to annexation proceedings conducted pursuant to N.D.C.C. § 15-53.1-05.1. At the time of the hearing provided for under N.D.C.C. § 15-53.1-06, some residents requested their names be withdrawn from such petition. N.D.C.C. ch. 15-53.1 was repealed in 1985 and the new statute incorporates N.D.C.C. §§ 15-53.1-05.1 and 15-53.1-06 in N.D.C.C. §§ 15-27.2-02 and 15-27.2-04 respectively. Therefore, I will refer to the provisions in chapter 15-27.2 in this letter.

In Judson PTO v. New Salem School Board, 262 N.W.2d 502, 505-07 (N.D. 1978), the North Dakota Supreme Court addressed the question whether petitioners are entitled to withdraw their names from a petition. In Judson PTO, the court held that where a statute or constitutional provision requires notice and a hearing regarding the petition, petitioners are entitled to withdraw their names until the notice and the hearing on the petition are completed. Id. at 507.

N.D.C.C. § 15-27.2-02 is subject to the other provisions in the chapter relating to annexation proceedings generally. N.D.C.C. § 15-27.2-04 requires the county committee for the reorganization of school districts to hold a hearing, N.D.C.C. § 15-27.2-04(1), and to give notice at least 14 days prior to the time the hearing is to be held, N.D.C.C. § 15-27.2-04(2). Therefore, residents of a school district who have signed a petition relative to annexation proceedings under N.D.C.C. § 15-27.2-02 may withdraw their names from the petition until such time as the notice and hearing on the petition are completed. 262 N.W.2d at 507. It follows, therefore, that if the names have been withdrawn from the annexation petition prior to the completion of the notice and the hearing on the petition, the county committee for the reorganization of schools must thereafter omit such petition signatures from consideration in the annexation proceedings.

I hope this information has been helpful to you.

Sincerely,

Nicholas J. Spaeth

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