

FILE

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✓ 16.1-04-02

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June 16, 1992

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Honorable Jim Kusler
Secretary of State
State Capitol
600 E Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Kusler:

Thank you for your February 7, 1992, letter regarding the location of polling places. Specifically, you inquire whether a precinct polling place must be located within a precinct. You indicate this has been a particular problem for precincts in light of the recent redistricting in North Dakota as well as for purposes of implementing the Federal Voting Accessibility for the Elderly and Handicapped Act.

North Dakota Century Code (N.D.C.C.) § 16.1-04-02 provides:

16.1-04-02. Voting places - Duties and responsibilities of the board of county commissioners or the governing body of the city. The board of county commissioners of each county:

1. Shall designate a voting place for each precinct and may alter the voting places when there is a good and sufficient reason. However, the voting places for precincts located within the boundaries of any incorporated city must be designated, and altered if required, by the governing body of the city.
2. Shall provide that all voting places are accessible to the elderly and the physically disabled.

N.D.C.C. § 16.1-04-02. The purpose of the Federal Voting Accessibility for the Elderly and Handicapped Act (the "Act") is to promote the elective franchise by improving access to polling places for the handicapped and the elderly (42 U.S.C. § 1973ee), and the Act requires that

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political subdivisions responsible for conducting elections assure that all polling places for federal elections are accessible to handicapped and elderly voters. 42 U.S.C. § 1973ee-1.

The North Dakota Supreme Court, in Ke-lin v. Devils Lake, 141 N.W.756 (1913) addressed the issue of the validity of election results when an election was held at one central voting place rather than having a voting place in each ward as required by statute. The court, in upholding the election results, stated:

"There is nothing in the Constitution that requires the voter, when offering his vote, to stand on the soil embraced within the boundary lines of the district, or that prohibits the Legislature from making a room or building in an adjoining district a part of the district where the voter resides for the purpose of registering and casting his vote. All that the Constitution requires is that the elector must vote at the polling place designated by law for casting the vote of the district where he resides, and the validity of his vote is not affected by the circumstance that the place is located on the wrong side of an imaginary line.

.....
The object of the Constitution is to secure to every citizen the right to cast one honest vote. To that end it enacts that he shall vote at his own home with his neighbors, where he is known, and not at some other polling place where he may not be known. But all this is fully complied with when he votes with his neighbors at the place designated by law for that purpose, and whether that place be located on one side or the other of an imaginary line bounding a town or district is not, in the constitutional sense, a matter of slightest consequence."

Id. at 761 citing People v. Carson, 30 N.Y. Supp. 817. Following an extensive analysis of case law from other jurisdictions, the court held that when an election is held at the place designated by the lawful municipal authority, is conducted regularly, and a fair and regular canvas and return is made of all votes cast, in the

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absence of a statute expressly invalidating the election, it will be upheld even if the polling place is located outside of the precinct. Id. at 763.

While the Kerlin case dealt with the validity of election results when the voting place was not physically within the precinct, the same analysis may be applied in determining, prior to an election, to designate a polling place outside of a precinct, county, or district when it will enhance the elective franchise. You indicate that the need to locate a polling place outside of a precinct has arisen in the context of redistricting and in the political subdivision's attempt to comply with state and federal laws which require that polling places be accessible to the elderly and the handicapped. It is my opinion that a polling place may be located outside of a precinct if it provides an enhancement to the elective franchise by increasing accessibility and ease of voting for purposes of implementing state and federal laws, as well as providing a central voting place for all voters. It is necessary that the polling place be designated by the proper political subdivision, that the election be conducted in a fair and regular manner, and that a regular canvass and return of the votes cast be made.

This opinion is supported by N.D.C.C. § 16.1-04-02(1) which allows the city or county, as the case may be, to alter the precinct voting places for "good and sufficient reason." N.D.C.C. § 16.1-04-02.

I trust this responds to your inquiry.

Sincerely,

Nicholas Spaeth
Nicholas J. Spaeth

cjs/krb

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