

N.D.A.G. Letter to Vogelpohl (June 18, 1986)

June 18, 1986

Mr. Steven L. Vogelpohl
Lincoln City Attorney
P.O. Box 2575
Bismarck, ND 58502-2575

Dear Mr. Vogelpohl:

Thank you for your letter of March 25, 1986, inquiring whether there is a minimum number of votes that a write-in alderman candidate must have in order to be elected to municipal office. I apologize for the delay in responding to you.

N.D.C.C. § 40-21-13 discusses municipal elections and provides, in part, as follows:

40-21-13. MUNICIPAL ELECTIONS TO BE GOVERNED BY RULES APPLICABLE TO COUNTY ELECTIONS --ABSENT VOTING. The manner of conducting, voting at, keeping poll lists, and canvassing votes at municipal elections, and contests of the results of such elections shall be governed, as nearly as possible and except as otherwise provided in this chapter, by the laws of this state applicable to elections and contests in the case of county officers. . . .

(Emphasis supplied).

An example of an exception to the general election laws with respect to municipal elections is N.D.C.C. 40-21-17. This particular statute states that the "person having the highest number of votes for any municipal office shall be declared elected to such office." Clearly the Legislature has concluded that, with respect to municipal elections, the highest number of votes elects the person to "any" municipal office. Therefore, in answer to your question, there is no minimum number of votes that a write-in alderman candidate must have in order to be elected to municipal office.

Your second question inquires as to the procedure to be followed in a situation where no one is elected to the office of alderman. N.D.C.C. § 40-08-08 provides the procedure to fill a vacancy on the city council where a vacancy occurs in the office of alderman "by death, resignation, or otherwise." Obviously, the failure to elect a successor to the office of alderman creates a vacancy due to the failure of the incumbent to qualify as provided by law. N.D.C.C. § 44-02-01(6). Thus, a vacancy does occur in the office of alderman where no one is elected to that office at an election.

Upon the happening of such a vacancy, the city council may call for a new election. N.D.C.C. §§ 40-21-15, 40-08-08. Where the council does not call for a new election and

where a petition requesting a special election has not been presented to the council pursuant to N.D.C.C. § 40-08-08, the council may appoint to fill the vacancy until the next city election at which election the unexpired term shall be filled.

Sincerely,

Nicholas J. Spaeth

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