

N.D.A.G. Letter to Lothspeich (June 30, 1987)

June 30, 1987

Mr. Dennis Lothspeich
Williams County Assistant
State's Attorney
P.O. Box 1246
Williston ND 58802-1246

Dear Mr. Lothspeich:

Thank you for your letter of June 16, 1987, inquiring on behalf of a school district as to the proper procedure to be followed when contesting the eligibility of a person who has won election to a school board. According to your letter, the issue is the residency of the successful candidate.

The general powers and duties of a school board are found at N.D.C.C. § 15-29-08. Nowhere in the statute is the school board authorized to determine the eligibility or qualifications of any person elected to the school board. Indeed, a review of the applicable school board election laws has failed to locate any such authority.

North Dakota law, as found at N.D.C.C. § 15-47-06, states that unless otherwise specifically provided, school board elections are subject to the same statutes governing the election of county officials. The election laws governing the election of county officials are found at N.D.C.C. title 16.1. The applicable general election law as to contests of elections is found at N.D.C.C. ch. 16.1-16. Specifically, N.D.C.C. § 16.1-16-02 lists those who may contest elections and the statutes that follow provide the procedure whereby an election contest may occur. Persons wishing to contest the results of an election, including a school board election, must follow the election contest procedure.

Another alternative available to those desiring to contest the eligibility of an elected person to a school board is an action against the member contesting the member's qualifications. This was apparently the procedure used in a 1983 dispute in the city of Medora as to the qualifications of the mayor and other city officers. Dietz v. City of Medora, 33 N.W.2d 702 (N.D. 1983). Both the election contest and the civil action contesting the qualifications of the elected member require the assistance of private counsel.

You also ask what happens if the declared elected candidate is later declared ineligible? This would be dependant upon the court order issued in any action which may occur. In other words, it is not possible to respond to these questions definitively at this time since the answers may be provided by a court if the appropriate action is filed as described above.

I hope this information is helpful. If you have any questions, please do not hesitate to

contact me.

Sincerely,

Nicholas J. Spaeth

cv