

N.D.A.G. Letter to Koppang (July 25, 1989)

July 25, 1989

Mr. Alton N. Koppang, Director
Finance & Reorganization
Department of Public Instruction
State Capitol
Bismarck, ND 58505

Dear Mr. Koppang:

Thank you for your July 13, 1989, letter concerning the appropriate election at which new members to a school district are to be elected.

According to your letter, the number of Max Public School District school board members has recently been increased from five to seven pursuant to the petition provisions of N.D.C.C. § 15-28-01(2). Your question is whether the two new members may be elected at a special election or whether they may not be elected until the next annual school district election. You informed a member of my staff that the expansion of the number of school board members was not part of a reorganization of school district pursuant to N.D.C.C. ch. 15-27.3; instead, the expansion occurred pursuant to N.D.C.C. § 15-28-01(2).

N.D.C.C. § 15-28-01(2) states that if the voters approve an expansion in the number of school board members, "the additional members shall be elected to the board at the next annual school district election in the same manner as other school board members." Thus, according to N.D.C.C. § 15-28-01(2), it is the next annual school district election at which the new school board members shall be elected to the board.

Another statutory provision concerning public school district elections, however, states that a special election may be held at anytime when approved by a resolution of the school board for any purpose provided for by law. N.D.C.C. § 15-28-03(1). Arguably, therefore, the district may hold a special election to elect the additional two members of the Max Public School District pursuant to N.D.C.C. § 15-28-03(1).

N.D.C.C. § 15-28-03(1), which allows a special election to be held at any time, is a general provision applicable to school district elections. N.D.C.C. § 15-28-01(2), which concerns the expansion of the number of school board members and the time at which additional members are to be elected, is a special provision applicable only to that specific factual situation. Whenever a general provision and a special provision in a law conflict and the two cannot be construed so as to give effect to both provisions, the special provision must prevail and be construed as an exception to the general provision. N.D.C.C. § 1-02-07.

Applying this statutory rule of construction, it is my opinion that the provisions of N.D.C.C. § 15-28-01(2) would apply in this specific fact situation and that the election to elect the two new members of the school board must be held at the next general school district election.

I hope this discussion and information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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