

N.D.A.G. Letter to Meyer (July 25, 1991)

July 25, 1991

Honorable Ray Meyer
State Representative
HCR 81, Box 40
Morristown, SD 57645

Dear Representative Meyer:

Thank you for your recent letter, mailed July 9, 1991, concerning the application of 1991 N.D. Sess. Laws ch. 180. You ask:

1. Whether the phrase "newly elected" applies to persons elected to a school board for the first time, as well as to persons who are reelected to another term.
2. Whether the section applies to persons elected prior to July 1, 1991, but who assume the office of school board member after that date.
3. Whether the section applies to persons who are appointed to fill a vacancy on a school board.

Words used in a statute are to be understood in their ordinary sense unless a contrary intention plainly appears. N.D.C.C. § 1-02-02. Words and phrases in a statute must be construed according to their context and to the rules of grammar and the approved usage of the language. N.D.C.C. § 1-02-03. When the wording of a statute is clear and free of ambiguity, the letter of the statute is not to be disregarded in favor of pursuing its spirit. N.D.C.C. § 1-02-05.

All statutes are to be applied prospectively unless retroactivity is expressly declared. N.D.C.C. § 1-02-10. However, a statute is not retroactive because it draws upon antecedent facts for its operation or because part of the requisites of its action are drawn from time antecedent to its passing. Public School District No. 35 v. Cass County Board of Commissioners, 123 N.W.2d 37, 40 (N.D. 1963).

School board members are elected at an annual election held between April 1 and June 30. The term of an elected school board member commences at the annual meeting in July of that year provided for in N.D.C.C. § 15-29-02. N.D.C.C. § 15-28-03(1).

If a vacancy occurs in the membership of a school board, the school board has the power to fill that vacancy by appointment and an appointee holds office only until the next annual election and until a successor is elected and qualified. N.D.C.C. § 15-29-06.

1991 N.D. Sess. Laws ch. 180 provides:

School board members -- Attendance at workshop. Each newly elected school board member shall, within one year of assuming office, attend an in-service training workshop hosted by the North Dakota school board association or its designee. The workshop must include presentations on the role of a school board member, the duties of a school board, and information regarding educational financing.

Your first question concerning whether the new law applies to those elected to a school board for the first time, or includes those who are reelected to another term, is answered by the ordinary usage of the language and the context in which it is used. The purpose of the statute is to provide information to persons who are new to the business of being school board members. In that context, the term "newly elected" means persons who are not continuing in office by being reelected. To reelect an individual is to elect that person for another term in office. Webster's New Collegiate Dictionary 962 (1979). If it was intended that the education workshop be a continuing requirement, the legislation would have specifically provided for coverage of all persons elected to a school board, whether for the first time or by reelection. It is my opinion that the intent of the in-service training workshop is to benefit those persons elected to a school board who are not at the time of election incumbents by previous election. Had it been the intent of the Legislature to impose the in-service training workshop more broadly, a periodic training requirement could have been enacted and the term "newly elected" would be unnecessary.

Your second question raises the issue of retroactivity. No North Dakota statute is retroactive unless specifically declared to be so, but merely relying on requisites that are drawn from time antecedent does not make a statute retroactive. The new section in question requires the training workshop to be attended within one year of assuming office. School board members' terms begin at an annual meeting held in July following their election. The effective date of 1991 N.D. Sess. Laws ch. 180 is July 1, 1991. Persons elected at the 1991 school board elections assume their term of office on or after the effective date of the act. The fact that the imposition of the training workshop draws on the antecedent event of an election during the same year before the effective date does not make the requirement for the training workshop retroactive.

It is my opinion that the requirements of 1991 N.D. Sess. Laws ch. 180 apply to school board members who were "newly elected" at the school board elections in 1991.

Your third question asks whether members appointed to fill a vacancy on the school board would be required to attend the training workshop. Ordinary usage of language defines elected as:

[I]n its ordinary signification, carries with it the idea of a vote, generally popular, sometimes more restricted, and cannot be held the synonym of any other mode of filling a position.

Black's Law Dictionary 464 (5th ed. 1979). Because the Legislative Assembly applied the training workshop requirement to newly elected members only, and did not include those reelected or appointed, it is my opinion that the requirements of the section do not apply to those persons appointed to fill vacancies.

Sincerely,

Nicholas J. Spaeth

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