

**OPINION  
62-118**

September 5, 1962        (OPINION)

**ELECTIONS**

RE: Filing Itemized Statement of Expenses

This is in response to your letter in which you set forth the following facts:

A write-in candidate received the minimum votes in the primary election to place his name on the ballot in the general fall election. The write-in candidate did not comply with section 16-20-04 of the North Dakota Century Code, which requires that an itemized statement be filed within fifteen days after the election, setting forth the moneys contributed, expended or promised by him to aid and promote his nomination. As of now, such itemized statement has not been filed. You then request an opinion on the following questions:

- 1) May the County Auditor omit his name from the general election ballot because of said write-in candidate's failure to file said itemized statement per above quoted Section 16-20-04 of the North Dakota Century Code; 2) In the event of said write-in candidate's victory in the general fall election, may said successful write-in candidate qualify for office without paying the \$25.00 for every day on which said candidate is in default?"

Section 16-20-20 of the North Dakota Century Code provides as follows:

FAILURE TO FILE LIST OF EXPENSES - NAME OMITTED FROM BALLOT - DELAY IN MAKING STATEMENT - EFFECT. The name of a candidate chosen at a primary election, or otherwise, shall not be printed on the official ballot for the ensuing election unless there has been filed by or on behalf of said candidate the statement of accounts and the expenses relating to nominations required by this chapter. Delay beyond the time prescribed in making such statement shall not preclude its acceptance nor prevent the insertion of the name on the ballot, if there is a reasonable time therefor after the receipt of such statement."

The term "candidate" as defined by Webster means "one who offers himself or is put forward by others as a suitable person or an aspirant or contestant for an office, privilege, or honor."

The above section does not, of itself, declare a person failing to file the expense account as ineligible to the office nor does it provide that such person shall be eligible as a candidate. It provides that the name shall not be printed on the official ballot. This section does not distinguish between a self-announced candidate, an avowed candidate or a drafted candidate. He may still be a

"write-in" candidate or run on "stickers."

The North Dakota Supreme Court in Maher v. Jahnel (73 N.D. 742), amongst other things, held the candidate's failure to file a statement of expense did not render him ineligible as a candidate. In this case, the name of the candidate was placed on the ballot and received the highest number of votes. The attempted contest was not initiated until after the general election. The court, in effect, said it was too late to contest the election. The wrong was committed after the primary election and the time to contest the results of the primary election had elapsed. The court does not indicate whether the county auditor was justified in placing the candidate's name on the ballot even though he failed to file the itemized expenditure as required by law. It is to be noted that the action in this case was not to prohibit the placing of the candidate's name on the ballot - rather it was on the qualifications of the candidate and his eligibility to take office after the general election.

It could well be that the construction of section 16-20-20 would be deemed directory after an election but mandatory prior to the election. Thus, in direct response to your first question, it is our opinion that the county auditor may omit the name of the write-in candidate, unless he files the itemized statement required by section 16-20-04 within a reasonable time.

In response to your second question, it is our opinion that failure to file the required itemized statement and the failure to pay any fine assessed thereunder does not declare a candidate ineligible for office if he is otherwise qualified. If, however, his actions in the campaign or in any manner related to the election come within the provisions of section 16-20-01, he would be guilty of corrupt practices and as such could be declared ineligible to hold the office. This would be on the assumption that he is tried and found guilty as contemplated in section 16-20-22. In this respect, it would appear that the statutory period in which to file a contest would be applicable. As to the time of successfully bringing a contest, we urge you to examine 73 N.D., 742 Supra.

LESLIE R. BURGUM

Attorney General