

**OPINION
62-97**

May 14, 1962 (OPINION)

ELECTIONS

RE: Official Newspaper - Filing Fees

This office is in receipt of a communication from Mr. E. W. Doherty of New Rockford, co-publisher of THE TRANSCRIPT, the official newspaper for Eddy County, in which he states that the Auditor of Eddy County requests the payment of the Three Dollar Filing fee in connection with Mr. Doherty's application to have the name of his paper placed on the Primary Election ballot to be voted upon for nomination as official newspaper of Eddy County.

Mr. Doherty states that one adjacent county makes a charge for filing while another does not. Apparently, there is some variation in the practice followed by the several county auditors. In his letter, Mr. Doherty advises that you hold to the view that the filing fee is not required, and he asks us to submit to you the opinion of this office in relation to the matter.

We concur in the view expressed by the state's attorney of Eddy County viz. that there is no filing fee necessary in order to have the name of the newspaper placed upon the primary election ballot.

Section 46-06-03 of the North Dakota Century Code deals with the filing of the application and reads as follows:

APPLICATION TO PLACE NAME ON BALLOT AT PRIMARY ELECTION. The county auditor shall place the name of a newspaper upon the primary election ballot if the newspaper is qualified to serve as the official newspaper within the county and if, not more than sixty days nor less than forty days and before four o'clock p.m. of the fortieth day prior to the primary election, an application asking that the name of the newspaper be placed upon the ballot to be voted upon for nomination as official newspaper of the county is filed with the county auditor by a person, partnership, or corporation owning or operating the newspaper. The county auditor shall endorse upon the application the name of the newspaper and the date upon which the application is presented to his office."

Chapter 46-06 of which section 46-06-03 is a part, appears to be a special chapter relating to the selection of an official newspaper and seems to be complete in itself. No where in this section do we find the requirement for the payment of a fee in order to file the application. Nor do we find any reference whatsoever to the provisions of chapter 16-04 of the North Dakota Century Code, which deals with the filing of petitions by candidates in the Primary Election. Section 16-04-05 provides that candidates for office in the Primary Election (with a half dozen exceptions) shall accompany their petition with the payment of a filing fee, but section 46-06-03, quoted above, does not refer to a "petition" but simply to

an "application."

Therefore, it is the opinion of this office that no filing fee is required of the publisher who files with the county auditor his application to have the name of his newspaper placed upon the primary election ballot. Since the statute makes no provision for payment of the same, there is no legal justification for demanding it from the applicant.

LESLIE R. BURGUM

Attorney General