

OPINION
63-120

February 9, 1963 (OPINION)

ELECTIONS

RE: Legislative District - Special Election

This is in response to your request for an opinion as to the procedure to be followed in calling a special election in Eddy-Foster legislative district due to the death of Representative Don Nicolson.

Pursuant to section 16-07-09 of the North Dakota Century Code the special election is predicated upon receiving notice from the county auditor that a vacancy exists. Section 16-07-01 requires publishing and posting of a notice at least eight days prior to the holding of election. Section 16-07-03 provides that public printed or posted notices shall be given at least six days before holding the convention which will nominate the candidate for the office to be filled. Section 16-05-03 provides that the certificate of nomination shall be filed not less than twenty-five days before the day of election and not later than five o'clock p.m. on the twenty-fifth day. Section 16-07-10 provides that if a vacancy occurs in the office of the legislative assembly while it is in session, the Governor immediately upon receiving official notice thereof shall proceed in the manner prescribed in section 16-07-09.

The eight-day notice required under section 16-07-01 may be concurrent and be part of the twenty-five days referred to in section 16-07-09 or may be part of the days of notice referred to in section 16-07-09 or may be part of the days of notice referred to in section 16-07-03.

it is therefore our opinion that the minimum time required to call a special election and hold same is thirty-one days. The special election may be accomplished in thirty-one days if everything progresses in clock-like precision. However, this seldom happens. To assure and permit orderly procedure and conduct of a special election, thirty-three days should be allowed. This would allow one day to permit the notice and proclamation to come into the proper hands for appropriate action and one day to file the certificate with the proper office after the nomination has been made.

By an opinion to Governor John E. Davis dated February 14, 1957, this office advised that where the newly elected officer would not be able to participate in the Legislative Assembly in session that no special election would be required if the term of the office would expire prior to the next regularly scheduled session of the Legislative Assembly. It appears that the Governor received notice of vacancy on or about February 12. We believe the same conclusion would apply here.

It is therefore, our further opinion that where it will be impossible for the newly elected representative to serve during the present

session and where the term for which he will be elected will expire prior to the next regularly scheduled session of the Legislative Assembly that the plain mandate of the statute does not require an election to be held at this time. It also follows that there exists no legal reason or duty under these circumstances to issue a writ of election.

HELGI JOHANNESON

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