

OPINION
63-127(Sep 18)

September 18, 1963 (OPINION)

ELECTIONS

RE: Special Election - Not "General" Election

This is in reply to your letter of September 18, 1963, requesting an opinion of this office in regard to Writs of Election.

You inform us that your office has this date received notice of the death of Representative Kenneth A. Fitch on September 13, 1963, from the Cass County Auditor. Insofar as there is a special election on October 22, 1963, in the Eastern Congressional District, and in view of the fact that there are thirty-four days remaining prior to said election, you request our official opinion as to whether or not, under Section 16-07-09 and other relevant sections of the North Dakota Century Code, your office can issue a Writ of Election calling for a special election to fill the vacancy now existing in the Ninth Legislative District of Cass County, on October 22, 1963.

Section 16-07-09 of the North Dakota Century Code provides:

16-07-09. VACANCY EXISTING IN OFFICE OF MEMBER OF LEGISLATIVE ASSEMBLY - SPECIAL ELECTION TO FILL. Whenever a vacancy in the office of a member of the legislative assembly occurs by death, resignation, or otherwise, the county auditor of the county in which such vacancy occurs, officially shall notify the governor thereof. Upon receiving such notification, the governor, if there is a session of the legislative assembly between the time such vacancy occurs and the time of the holding of the next general election, shall issue a writ of election directed to the sheriff of such county commanding him to notify the several boards of election in the county or district in which the vacancy occurs to hold a special election at a time designated by the governor to fill such vacancy. If there is no session of the legislative assembly between the time such vacancy occurs and the time of the holding of the next general election, the special election shall be held at the same time as the general election. If the term of office of the member whose office is vacated expires prior to the next session of the legislative assembly, no election shall be held to fill such vacancy."

After full consideration of the facts and circumstances presented, including the fact that the election to be held in the Eastern Congressional District is not a state-wide election, the statutory provision above quoted, Section 16-06-01 of the North Dakota Century Code, and the language of our North Dakota Supreme Court, in State ex rel. Lanier v. Hall, 23 N.W.2d., at page 47, defining and considering the meaning of the terms general, primary and special elections, it is our opinion that the prospective Eastern Congressional District Election is not a "general election" within the meaning of Section

16-07-09 and that the special election to fill the vacancy caused by the death of Representative Fitch cannot be held at the time of that election, unless there is to be a session of the legislative assembly before the next general election.

HELGI JOHANNESON

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