

OPINION
63-131

June 19, 1963 (OPINION)

ELECTIONS

RE: Special Election - Publication of Sample Ballot

This office acknowledges receipt of your letter of June 17, 1963, with reference to the special election to be held July 17, 1963. Your letter is a follow-up to our telephone conversation of last Friday, June 14, 1963.

In your letter, you make reference to Sections 16-07-01 and 16-06-02 of the North Dakota Century Code, and you ask us whether or not these sections required the publication of a sample ballot prior to the special election July 17, such as is prescribed for the general election in Section 16-06-02, or for the primary election in Section 16-06-13 of the North Dakota Century Code?

Section 16-07-01 of the North Dakota Century Code reads as follows:

NOTICE OF SPECIAL ELECTION. A notice of a special election shall be in substantially the form prescribed by section 16-06-02 and shall be published or posted as therein prescribed for at least eight days previous to the date of holding such special election." (Emphasis supplied.)

Section 16-06-02 of the North Dakota Century Code is as follows:

NOTICE OF ELECTION - CONTENTS - PUBLICATION - POSTING - AFFIDAVIT OF POSTING. Notice of any general election shall be published by the county auditor in the official county newspaper once each week for two consecutive weeks next preceding such election. Such notice shall be substantially as follows: *** In addition to the publication required in this section, the county auditor shall publish for two consecutive weeks prior to the election in the official county newspaper, and if no newspaper is published in the county a newspaper published in an adjoining county in the state, a copy of the sample ballot of the general election, as arranged by order and direction of the persons charged with such duty. The form of the ballot so published shall conform in all respects to the form prescribed for the sample general election ballot and the make up and general form shall conform to that prescribed for said sample ballot, and shall be printed in either 6-point or 8-point type."

Section 16-07-01 of the North Dakota Century Code provides in part that "A notice of special election shall be in substantially the form prescribed by section 16-06-02 and shall be published * * *." (Emphasis supplied.)

The word "substantially" means not an accurate or exact copy, but one

which contains the substance of the instrument copied. Words and Phrases, Edgerton v. State, Tx. 70 S.W. 90, 91. "Substantially" means in a substantial manner; really; solidly; competently. Words and Phrases, Western Assur. Co. v Altheimer, 25 S.W. 1067. Words and Phrases defines the phrase "substantially the same" as follows: "When we say a thing is 'substantially the same', we mean it is the same in all important particulars." Adams v. Edwards, 1 Fed. Cas. 112.

In the light of the above definitions, it is our conclusion that the notice of a special election must conform to the provisions of Section 16-06-02 in every important particular, including the publication of the copy of the sample ballot in the official county newspaper for two consecutive weeks prior to the election. It is our opinion that the publication of the sample ballot is highly important in order that the electors may acquaint themselves with the measures to be voted on at the special election.

While the rule of law appears to be that a defect in a notice of general election would not necessarily avoid the election, it is pointed out that "It is equally clear in the case of special elections wherein the necessity for notice is so much more urgent that the rule as to compliance with statutory requirements in the giving of notice should be much more strictly enforced." 18 Am. Jur. Elections, Section 110 (Page 248). (Emphasis supplied.)

Statutory provisions with reference to the giving of notice of elections are for the purpose of informing the votes of the place, time and purpose of the election for a sufficient length of time to enable them to mature the issues in their minds and to determine on which side they choose to cast their ballots." 29 C.J.S. Elections, Section 71, (Page 95.)

Therefore, it is the opinion of this office that two consecutive weekly notices of the special election set for July 17, 1963, must be published in the official county newspaper, including the copy of the sample ballot, at least eight days prior to the election.

HELGI JOHANNESON

Attorney General