

July 9, 1963 (OPINION)

ELECTIONS

RE: Special Election - Setting Date For

This is in reply to your letter of July 8, 1963, in which you ask if you have the authority to suspend, delay or reschedule any one or all of the referred measures now scheduled for the July 17 special election.

As you are aware the matter of calling a special election to vote upon measures referred to the people is governed by Section 25 of the North Dakota Constitution. The decision as to whether to call a special election, at least insofar as the measures under consideration are concerned, is discretionary with the Governor. He cannot be forced to a special election except in the instance where the referendum petition filed against an emergency measure is signed by thirty thousand electors at large. In such instance, the special election must be called for a date not less than one hundred nor more than one hundred thirty days after the adjournment of the session of the legislature. This situation does not exist in any of the measures under consideration.

Since the decision as to whether to call a special election is discretionary with the Governor it is a matter to be decided within his sound judgment and within the exercise of his discretion. As stated above he cannot be required to call a special election. However, once the Governor has exercised that discretion and officially called the special election, the Constitution makes no provision for the withdrawal of the order of special election. The general rule of law is that once a person vested with discretion to act has exercised that discretion he subsequently loses jurisdiction of the matter.

We have been unable in this short period of time to find any case law directly in point. However, it is our opinion that the Governor, having once exercised his discretion by calling a special election on the referred measures, loses jurisdiction of the matter of the special election and cannot, thereafter, suspend, delay or reschedule any one or all of the referred measures scheduled for election.

HELGI JOHANNESON

Attorney General