

**OPINION**  
**64-205**

June 1, 1964 (OPINION)

SCHOOL DISTRICTS

RE: Composition of School Board - Residence Requirements

This is in reply to your letter of May 27, 1964, in regard to vacancies in school board membership and the forthcoming election for public school district officers to be held on the first Tuesday in June, i.e., June 2, 1964, pursuant to section 15-28-03 of the North Dakota Century Code.

You inform us that the fifty percent taxable valuation of the public school district involved consists of approximately \$4,043,903.00 of which \$1,272,270.00 is fifty percent taxable valuation of property within the city.

You further inform us that the present school board of said district consists of three city residents and two rural members. You call our attention to section 15-28-02 of the Supplement to the North Dakota Century Code which provides:

RURAL MEMBERS OF SCHOOL BOARD. When a school district is composed of six or more sections of land having a city or incorporated village within its boundaries and when the population of the school district does not exceed two thousand persons, at least two members of the school board shall be residents upon farms outside the corporate limits of the city or village. When the assessed taxable valuation of the rural area of a school district containing a city or incorporated village is greater than the assessed taxable valuation of the urban area of the district, the majority of the members of the school board shall reside upon farms outside the corporate limits of the city or village. In every public school district composed of six or more sections of land and having within its boundaries a city or an incorporated village with a population of more than two thousand but less than fifteen thousand persons, and which has at least twenty-five families residing upon farms outside the corporate limits of the city or village but upon farmsteads located within the school district and sending children to school in such school district, at least one member of the board shall be a resident upon a farm outside the corporate limits of the city or village. When a school district has within its boundaries four or more incorporated cities or villages, a school board member residing in a city or village having a population of two hundred or less, according to the latest federal census, shall be considered as a rural member and as residing upon a farm within the meaning of the section."

We note also the provision of section 15-28-01 of the Supplement to the North Dakota Century Code that:

\* \* \* \* All such members shall serve for the terms prescribed above and until their successors are elected and qualified, and the length of their respective terms shall be determined by lot.\* \* \* \*"

You further inform us in effect that at the present time the terms of one rural area member and one city area member have run the length of time prescribed in section 15-28-01 of the Supplement to the North Dakota Century Code, that the rural member has filed a petition for reelection, the school clerk has received two petitions for the other vacancy, and both of said petitioners are from the city.

Your questions are as follows:

1. Based upon the facts as above presented, must the School Board consist of 3 rural members and 2 members from the City of Carrington?
2. Based upon the facts as above presented, may the ballot for election contain the names of the two individuals who have filed petitions who are both from City of Carrington?
- "3. Further does a petition filed on May 23rd meet the requirements of Section 15-28-09 for the election to be held on June 2nd?"

Your first question must be answered that the school board constituted pursuant to section 15-28-02 of the Supplement to the North Dakota Century Code (see also: section 15-28-01 of the Supplement to the North Dakota Century Code) may contain not more than two members from the city.

In reply to your second question we believe we should first call attention to the provisions of section 15-28-09 of the Supplement to the North Dakota Century Code providing that:

Any candidate for election as a member of the school board of a school district shall file with the clerk of the board, not less than ten days before the election, a statement setting forth his name and the position for which he is a candidate.\* \* \* \*"

We are not at this time passing on the possibility of a present resident of the city running for a position as a rural member of the board and qualifying for such office after the election is held. There is, however, on the basis of the facts you give, no vacancy in the office of city member of the school board to which reference has been previously made at the time of the election to be held on the second of June, 1964.

In reply to your last question, assuming the petition you refer to meets the other requirements of section 15-28-09 of the Supplement to the North Dakota Century Code hereinbefore quoted it is our opinion that filing same on the twenty-third day of May, 1964, is timely.

HELGI JOHANNESON

Attorney General