

OPINION
64-46

March 2, 1964 (OPINION)

CITIES

RE: Election - Council - Petitions

This is response to your letter in which you advise that you have a mayor and council form of city government. Presently there are two vacancies for the position of alderman in one particular ward. One vacancy is for a four-year term and the other is for a two-year unexpired term. Three persons are running for the two offices. You call our attention to section 40-21-07 of the North Dakota Century Code, which provides as follows:

PETITION FOR NOMINATION OF ELECTIVE OFFICIAL IN MUNICIPALITIES - SIGNATURE REQUIRED - CONTENTS. A candidate for any public office in an incorporated city or village may be nominated by filing with the city auditor, at least twenty days prior to the holding of the election, a petition signed by not less than ten percent of the qualified electors residing within the ward or precinct in and for which such officer is to be elected, if the election is by wards, or a like percent of the voters of the city or village if the officer is elected at large, except that in cities operating under the commission system of government the required petition may be signed by the electors at large residing within such city. In no case shall more than three hundred signatures be required, and such signatures may be on separate sheets of paper. No elector shall sign more than one petition for the same office. Each signer of such petition shall add to his name his postoffice address, giving the street and number of his residence."

You then ask whether or not an elector under the facts set out above and under the provisions of section 40-21-07 may sign the petition of more than one person seeking the office. Your specific question is: "Can an elector at the ward in question sign two of the three petitions for nomination of the two offices, or is the statute to be strictly construed and limited to only one petition?"

The section in question is defined to accomplish two purposes; one is to establish minimum and maximum requirements for a candidate, and the other is to protect the electorate from abuses that might result from indiscriminate signing of petitions. The language, "no elector shall sign more than one petition for the same office" is a provision of law to prevent individuals from indiscriminately signing petitions for the same office. The term "office" has a flexible meaning, depending upon the context in which the term is used. The term "office" in this instance applies to the vacancy. The office, in reality, is that of councilman individually and not collectively.

Thus, under the facts given there are two offices to be filled. It is therefore our opinion that under the provisions of section

40-21-07 of the North Dakota Century Code a person may sign the petition of two persons seeking the office of councilman. Should a person sign the petition of more than two persons, the signature of such person can be voided on every petition. It might appear at first glance that the earlier signature should be permitted to be counted but on a more careful examination it could be argued the latest signature should prevail over the earlier signatures on the basis that the latest signature, in effect, was to cancel the earlier signature. Which signature should be counted ultimately would be resolved on the intention of the signatory. This becomes an almost impossible task. The rule applied to ballots where an "X" is placed behind more than one name would apply here. To bring about a more equitable solution, it is our further conclusion that where a person signs a petition for more than two individuals seeking the same office, his signature will not be counted for any individual. In other words, the signature will not be counted on any petition.

HELGI JOHANNESON

Attorney General