

OPINION
64-86

October 6, 1964 (OPINION)

Mr. Richard B. Thomas

State's Attorney

Ward County

RE: Elections - Challenge of Voter - Identification

This is in response to your letter in which you ask whether or not a duly appointed and designated election official or challenger may require some identification of the person who is desiring to vote or is being challenged under the provisions of section 16-12-14 of the North Dakota Century Code.

Our form of government is predicated on the right of holding and participating in a free election and is one of our most prized possessions. This possession has value only if it is properly exercised. The misuse thereof is as bad as its denial - they are equally damaging. The difference is mainly as to form but the result is the same.

Measures to preserve and maintain this right were enacted during the territorial days and were incorporated into the laws of this state after statehood. Presently we have two statutes relating to this matter which have their origin in the territorial laws.

Section 16-10-15 of the North Dakota Century Code imposes a duty on the election officials to challenge any person offering to vote if they have reason to believe he is not qualified. Section 16-12-14 provides for challengers to be designated by each political party who may challenge any person offering to vote. It further provides that any such person challenged "shall stand aside and shall not vote unless he makes an affidavit * * * that he is a qualified elector of the precinct," or unless the challenge is withdrawn.

While the term "challenge" has variable meaning, in this instance it means to take exception to a person's right to vote. The person challenged is required to prove his eligibility or sign an affidavit. The term "unless such challenge is withdrawn" contemplates that some proof can be demanded and submitted and if satisfactory the challenge can be withdrawn or dropped. Identification is a basic element of proof. It is difficult to separate identification from any of the voting procedures. The clerks are required to keep a poll list which shall contain in numerical order the names of all persons voting at such election.

The right to vote is based on age and residence and not on appearance, appeal or other criteria. Identification is an essential process in establishing both age and residence.

Ideally, the challengers are selected on the basis of their general acquaintance of the electors and inhabitants of the precinct, and to

some extent because of their familiarity of the residential area.

Basically, penal laws are designed to prevent crimes and not merely to punish for the commission of a crime. Those who might perpetrate a fraud on the state might hesitate to do so if they are aware that upon request they must produce some identification. Requiring some identification is not an infringement upon an individual's right to vote but rather an act to safeguard that right.

Section 16-01-11 of the North Dakota Century Code provides, amongst other things, that the individual signing a petition on an initiative or referendum measure must also give his residence and post office address. This particular provision was challenged as being a violation of section 25 of the North Dakota Constitution, which amongst other things, provides with reference to petitions that no law shall be enacted interfering with the freedom in securing signatures to petitions. The North Dakota Supreme Court in *Wood v. Byrne*, 60 N.D. 1, 232 N.W. 303, held that the foregoing section did not impair, hamper, or restrict the right reserved to the people under section 25 of the North Dakota Constitution.

We believe that requiring identification is not an infringement upon the right to vote but rather a safeguard beneficial to all.

It is therefore our opinion that the election officials or challengers may ask and demand identification of a person offering to vote before such person is permitted to vote, even though he offers to sign and does sign an affidavit as to his eligibility to vote.

HELGI JOHANNESON

Attorney General