

OPINION
66-92

April 27, 1966 (OPINION)

Mr. Wallace D. Berning

Assistant State's Attorney

Ward County

RE: Elections - Petitions - Number of Signatures

This is in reply to your letter stating that you have been asked by your county auditor to request our interpretation of section 16-04-04 of the North Dakota Century Code in light of the recent redistricting as it affects your county.

Your question is stated as:

"Specifically what do we use as a base for the 'not less than two percent, nor more than five percent' requirement referring to votes cast for the same office in the last general election?"

You state that this question primarily concerns candidates for legislative offices.

When there has been no change in the district boundaries the provisions of section 16-04-04 of the 1965 Supplement to the North Dakota Century Code relating to "said office" would be applicable as follows:

"Such petition shall contain the names of not less than two percent and not more than five percent of the total vote cast for said office at the last general election if the office be under no party designation, and if under party designation, then the same percentage shall be applied to the total vote cast for the candidate of the party represented for the same position at the last general election, and if there were more than one party candidate, then such percentage shall be applied to the total number of votes for all party candidates divided by the number of party candidates."

Where there has been a change in district boundaries a new district is created and the provision of said section 16-04-04 of the 1965 Supplement to the North Dakota Century Code relating to, "If no candidate was elected or votes cast for an office at the last general election," would be applicable as follows:

"If no candidate was elected or votes cast for an office at the last general election, a petition shall be deemed sufficient if it has the number of signers equal to the number of the foregoing percentage requirements applied to the total average vote cast for the offices of sheriff, superintendent of schools and county auditor at the last general election in such county or district as the case may be, such average to be arrived at

by dividing the total vote cast for said offices in such county or district as the case may be by three. * * *"

Where a new district involves area in more than one county, or less than an entire county, it will of course be necessary to determine total vote for the offices named from each precinct in the new district's territory and make the necessary computations from that point. Where a precinct itself is divided by a new district's boundary, it will of course be necessary to interpolate the results of that division into the computation of total votes cast from such partial precinct on the basis of all material evidence at hand.

HELGI JOHANNESON

Attorney General