

**OPINION
68-120**

October 17, 1968 (OPINION)

Mr. Dale H. Jensen

Burleigh County State's Attorney

RE: Counties - Poll Lists - Delivery to Federal Court

This is in reply to your letter of October 9, 1968, relative to Public Law 90-274, an Act of Congress approved March 27, 1968, known as the "Jury Selection and Service Act of 1968." You state the following facts and questions:

"Chief Judge George S. Register of the United States District Court of this District informs me that, pursuant to that Act, said Court has adopted a Plan for Random Jury Selection which has now been approved by the Reviewing Panel. I am informed that all jurors for the United States District Court in North Dakota reporting for service after December 22 next must have been drawn or selected from the list of actual voters of the 1968 general election. Under the Act, all State and local officials having custody or control of lists of actual voters are required to cooperate in making the lists available to the Clerk of said Court for this official purpose.

"It is my understanding that the Clerk of said Court will either request the County Auditors to furnish lists of actual voters, for that purpose, or make the same available for copying or reproduction by the Clerk. Of course the list of actual voters must be available to the Clerk soon after the election in order that jurors be available for jury service.

"Under the provisions of Section 16-11-13, North Dakota Century Code, the County Auditor of each county is required to deliver or cause to be delivered two copies of the poll book to the inspector of elections in each election precinct. After the election, the inspection or one of the judges is required to deliver to the Auditor duplicate reports, accompanied with a poll list. See Section 16-13-07. In this County it has been customary for the election officials to return to the Auditor both poll books -- this permits the Auditor to check the returns if that should become necessary.

"If the County Auditors can legally deliver to the Clerk of the United States District Court, soon after the election returns are received, one of the duplicate poll books, for the Clerk's official use, this would doubtless save considerable inconvenience and work on the part of the Clerk and a substantial amount of expense to the Government. It would also eliminate work and inconvenience on the part of the County Auditors. Of course if this were done the Auditors would have to request of the election officials that both poll books be returned after the election. If one of the poll books is sent to the Clerk, would it be proper for the Auditor to permit the

Clerk to retain the same, subject to request for its return, or should it be forwarded to the Clerk with the request that a copy be made in that office and the poll book be returned to the Auditor?

"As you know, for a period of time after the election the County Auditor's Office is extremely busy, and if the procedure suggested is proper, I am sure the United States District Court would be greatly inconvenienced and it would be advantageous from the standpoint of both the Federal officials and the County Auditors."

Section 16-13-04 of the North Dakota Century Code requires the election board to prepare duplicate reports of the total votes cast for each candidate. Section 16-13-07 of the North Dakota Century Code, as amended, requires that the duplicate reports "accompanied with a poll list" are to be directed to the county auditor. Presumably the poll books you refer to in your letter in effect constitute the poll lists referred to in section 16-13-07.

While you state the practice in Burleigh County has been to submit both poll lists to the county auditor, we are aware that in some of the other counties of the State the practice has been to file only one copy of the poll list with the county auditor, the other poll list being filed with the clerk of the township or the city auditor as the case may be. The statutes are not explicit with regard to the disposition of the second copy of the poll list or poll book. In this instance however the Federal District Court is requesting the poll books. As you have noted in your letter, section 1863(d) of P.L. 90-274 provides:

"State, local, and Federal officials having custody, possession, or control of voter registration lists, lists of actual voters, or other appropriate records shall make such lists and records available to the jury commission or clerks for inspection, reproduction, and copying at all reasonable times as the commission or clerk may deem necessary and proper for the performance of duties under this title. The district courts shall have jurisdiction upon application by the Attorney General of the United States to compel compliance with this subsection by appropriate process."

The above cited federal statute requires the county auditor, among other officials, to cooperate with the Federal District Court in securing the necessary records, including poll books or poll lists. We therefore believe the county auditor may extend such cooperation as is necessary for the Court to obtain the names from the poll books. It would appear advisable that the poll books not be considered as the property of the Federal District Court and the statute above quoted appears to imply that the Court will only use the records temporarily while they are being inspected, reproduced or copied.

HELGI JOHANNESON

Attorney General