

**OPINION
68-166**

August 6, 1968 (OPINION)

Mr. William Heigaard

Assistant State's Attorney

RE: Elections - Special elections - Time

This is in reply to your letter with regard to submitting a local question at the time of the primary or special elections to be held in the autumn of this year.

You make reference to the last paragraph of section 25-12-12 of the North Dakota Century Code, as amended, providing:

The governing body of any such political subdivisions for the purpose of operating, maintaining, or participating in the operation and maintenance of mental health and retardation service units or providing such services by contract in accordance with this chapter, may by resolution of the governing body thereof submit the question of the authorization of a tax upon all taxable property in the political subdivision of not to exceed three-quarters of one mill to the electorate of the political subdivision at any special or regular election."

Your questions are stated as:

1. How many days prior to the primary election or on what date must the resolution be passed by the County Commissioners, in order to get it on the ballot for the primary election, held September third?

- "2. How many days prior to the general election or on what date must the resolution be passed by the County Commissioners, in order to get it on the ballot for the general election, which will be held November fifth?"

We note that no specific provision is made in this statutory provision establishing a definite deadline by which the resolution must be passed. On such basis the deadline would appear to be that determined on the basis of practical necessity.

We note that the above quoted statutory provision does not specify that an election on same is to be held at the time of the regular or special election but indicates that same is to be submitted to the electorate at any special or regular election. On such basis it is our conclusion that this question is intended to be a part of the regular election.

We note that Chapter 16-11 of the North Dakota Century Code indicates that questions to be voted for shall be on printed ballots.

We note that section 16-04-13 and section 16-06-02 of the 1967

Supplement to the North Dakota Century Code do require sample ballots to be published in a newspaper at least one week and not more than two weeks prior to the date of the election. On such basis the complete context of the ballots should be known to the county auditor in time for such publication.

We note also that section 16-11-11 of the 1967 Supplement to the North Dakota Century Code provides for delivery of ballots and manila wrappers to the inspector of elections at the meeting provided for in section 16-10-17 of the 1967 Supplement to the North Dakota Century Code. Obviously such information to be included on such ballots must be known to the county auditor prior to the meeting set in that section for a time not more than twenty days nor less than three days before each primary and special statewide or congressional election. Such information must necessarily be available to the county auditor in time for the auditor's office to be able to have them printed where printing is necessary. We note also that section 16-11-10 of the North Dakota Century Code requires that at least five days before any election the county auditor shall have the ballots printed and that same may be inspected by any person at the office of the county auditor. Such information should therefore be available to the county auditor in time to have the ballots printed by the time it is five days before the election.

It would probably be desirable to have the resolution for this type of a measure available to the county auditor at the same time such officer is informed of the other material that is to appear upon the ballot; however, we believe that such measure could validly be placed upon the ballot up to the time of the deadlines hereinbefore indicated.

HELGI JOHANNESON

Attorney General