

**OPINION
70-131**

February 18, 1970 (OPINION)

Honorable Robert B. Melland

Senator, Twenty-ninth District

Jamestown, North Dakota

RE: Counties - Redistricting - Petitions for Election at Large

This is in response to your letter in which you state that Stutsman County has determined that the county commissioners of the county will be elected on an at large basis rather than by districts. You then call our attention to section 16-04-04 of the North Dakota Century Code, as amended, and ask how its provisions may be applied to the petition requirements of persons seeking the office of county commissioner. You specifically ask for an opinion as to the number of signers that will be required on nominating petitions for the office of county commissioner where same are elected on an at large basis.

Section 16-04-04 of the North Dakota Century Code, which relates to petitions for nomination for county and district offices, and is material to the question under consideration, provides 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 most recent general election at which such office was voted upon if the office be under no party designation, * * *. If no candidate was elected or votes cast for an office at any 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 and county auditor at the most recent general election at which such offices were elected in such county * * *. * * * 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 two.
* * *."

In the present situation no officers were elected at large in your county, consequently the votes cast for the office of sheriff and county auditor will constitute the base upon which percentages will be applied with modification.

The amendments to Chapter 11-07 of the North Dakota Century Code providing for election of county commissioners on an at large basis do not contain any provisions which might be helpful in determining the specific percentages of signers required for a petition of nomination for the office of county commissioner.

We also note that section 16-04-04 as pertaining to party candidates provides, amongst other things, as follows:

* * * 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."

We must recognize that there are no specific statutory provisions which cover the present matter. We also recognize that we must give effect to the laws which have been enacted, and if the law cannot be followed literally the next best thing should be done so as to at least be in substantial compliance with the spirit of the law. It would be utter folly to attempt to say that there is no statutory provision or law which governs the present situation and, consequently each person may proceed as he desires.

By taking direction from the legislative intent expressed in the provisions relating to party candidates where there are more than one candidate, and by applying the rationale of section 16-04-04, the most logical conclusion requires that the procedures outlined therein be followed as closely as is possible and permissible. In doing so, we arrive at the initial premise that the votes cast for sheriff and the county auditor at the most recent election in the county is the starting point. Such total votes case are to be divided by 2. It is assumed that your county will elect 5 commissioners. Thus, by applying the rationale application to party candidates to this situation and the overall intention of section 16-04-04, the number of votes cast for sheriff and county auditor after being divided by 2 are further divided by 5. The number of signers required on a petition shall not be less than 2 percent and not greater than 5 percent of the votes after the same have been divided by 5.

It is, therefore, our opinion that the number of signers required on a petition shall not be less than 2 percent and not more than 5 percent of the product derived by taking the number of votes cast for the office of sheriff and auditor and dividing same by 2 and dividing such product by 5 or 3, depending on the number of commissioners to be elected.

As an example, if the total vote cast for sheriff in the most recent election was 12,000 and total vote cast for auditor was 8,000, making a combined total of 20,000 divided by 2, leaving a figure of 10,000, and which, if divided by 5 will leave a final product of 2,000, which is the figure upon which the percentage of not less than 2 percent nor more than 5 percent will be applied.

Assuming "S" represents the votes cast for auditor, in a five-commissioner district the following formula would show the minimum number of signers required:

$$\begin{aligned} (S + A) & \quad 2 \times .02 = \text{least number of signers} \\ & \quad 5 \quad \quad \quad \text{required on a petition; and} \\ (S + A) & \quad 2 \times .05 = \text{maximum number of signers} \\ & \quad 5 \quad \quad \quad \text{on a petition.} \end{aligned}$$

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