

OPINION
72-150

March 8, 1972 (OPINION)

The Honorable Ben Meier

Secretary of State

RE: Elections - Special Elections - Publishing of Ballot

This is in response to your letter in which you state that some concern has been expressed over the special election that is scheduled to be held on April 28 and the required legal publication of the sample ballot, etc. The concern relates to the time schedule of the legal publication and apparently arises from the fact that the election is held on Friday, whereas normally the elections are held on Tuesday, and from the fact that many of the county newspapers publish on Wednesday and Thursday.

Section 9 of Chapter 526, 1971 Session Laws, provides for the publication of the full text of the proposed Constitution in the same manner as initiated and referred measures are published. Section 16-01-07 provides for the publication of initiative and referred measures and specifically refers to Section 16-06-02.

Section 16-06-02 as is material to the question at hand provides as follows:

"* * *The county auditor shall publish for two consecutive weeks prior to the election* * *a copy of the sample ballot* * *."

It is noted that the statutory provision does not specify when the last publication shall have been accomplished, nor does it specify in specific terms that the two-week publication must be immediately prior to the election. However, a common sense construction of this provision leaves little doubt that the term "two consecutive weeks prior" means the two consecutive weeks immediately preceding the election. Any other construction would permit the publication any time, sixty or ninety days or more, preceding the election provided the publication is accomplished in two successive weeks. Such a construction would defeat the very purpose for which the provision was enacted.

We have not discovered any case law in the State of North Dakota which construes this language. This office had occasion to construe a statutory provision which has some similarity to the one in question. Under the provisions of Section 15-53-18 (which has now been repealed) this office had the occasion to construe the following language:

"Notice of such election* * *shall be published* * *once each week for two consecutive weeks at least thirty days next preceding such election* * *."

This office, in an opinion issued on March 17, 1949, to Leland J.

Smith, Assistant State's Attorney of Cass County, Fargo, North Dakota, concluded that this statute meant that the first publication had to be at least thirty days prior to the day of the election. It further observed that practically in every case the first publication is referred to when the time limit is fixed.

The term "week" as used in Section 16-06-02 must obviously refer to a period of time rather than a calendar week. In this respect we note that the Legislature since the enactment of the statute in question defined a week to mean seven consecutive days. See Section 1-01-33 as amended by Chapter 72 of the 1967 Session Laws. This clearly establishes that the word "week" now in the code unless otherwise stated means a period of seven days.

The New York court had an opportunity to construe the language "* * *for two consecutive weeks immediately preceding said election* * *" in the case of Town of Cortland v. Village of Peekskill in 24 N.E.2d. 139, in which it said that this provision required the full period of fourteen days to elapse since the first publication of the notice. We believe the reasoning of the court is persuasive.

It is therefore our opinion that the statutory provisions of Section 16-06-02 requiring the publication for two consecutive weeks prior to the election means that a full period of fourteen days must elapse from the first publication of the notice to the day of the election. The election is set for April 28. The first publication to meet the statutory requirement would have to be fourteen days prior to April 28 which would make the first publication date not any later than April 14. The next consecutive week would be April 21. We are aware that except for daily newspapers, few county newspapers, if any, publish on Friday, which is the date upon which the fourteenth and twenty-first falls. If a paper is not published on Friday, the common sense approach would indicate that the first day preceding the fourteenth day on which the paper is published would constitute substantial compliance with the statute. Thus, a publication on the twelfth or thirteenth of April and again on the nineteenth or twentieth of April would constitute substantial compliance. We do not believe that the statute in question means that it must be exactly two weeks disregarding the date of publication of newspapers.

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