OPINION
72-206

July 5, 1972 (OPINION)

Mr. Jack Huss
Chairman
North Dakota Republican State Committee
P. O. Box 1917
202 1/2 North Third Street
Bismarck, ND 58501

Dear Mr. Huss:

This is in response to your letter in which you state the following:

> "There is much confusion among the district party organizations as a result of the recent ruling on reapportionment.
>
> "In some districts we have two district committee chairmen and no procedure to determine who is chairman of the new district. In others we have a chairman living in the district but no assurance that he may not be challenged because he is presuming to serve as chairman over people who had no opportunity to vote for him or for those who voted for him.
>
> "Please give me a written opinion as to the legal status of the district committees as this time.
>
> "Must they serve until they are reconstituted in December, 1972, or must they hold organization meetings now?
>
> "I would appreciate receiving this information as soon as possible and preferably before our convention so that I can inform the party organization at that time."

The problems arise as a result of the United States District Court Order dated June 29, 1972, in which the state was redistricted and reapportioned.

To develop a better understanding, we believe it is advisable to treat the questions and problems in three separate phases; namely, the state convention including both the "legal convention" and the "endorsing convention"; the district endorsing convention (legislative candidates); and reorganization of the district committee.

As to the state convention, we must recognize that it serves two purposes. The one purpose is to discharge the duties and responsibilities as set out in section 16-17-18. These duties and objectives begin in the precinct caucus and will culminate in the state convention and are as follows:

1. To nominate the legal number of candidates for its party for the offices of presidential electors.

2. To elect a national committeeman and committeewoman.

3. To elect the required number of delegates to the national party convention and like number of alternates.

These duties are commonly referred to as the functions of the legal convention as distinguished from the endorsing convention.

We must assume that voter participation as set out in chapter 15-17 served the basis for the selection and election of individuals in the precinct caucuses as delegates to the district convention in which the delegates to the state convention were selected and elected.

If our assumption is correct, and we have no reason to believe otherwise at this time, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution will have been satisfied. Even though the delegates were chosen and elected under the ten existing legislative districts and the convention is being held after the court issued its order redistricting and reapportioning the state, we do not believe that this constitutes any serious legal complications.

At the state level, it does not become too significant that redistricting and reapportioning has been ordered because representation is on the basis of votes cast for the candidate for its party at the prior election. Therefore, the "legal convention" consists of delegates representing the members of the party throughout the state as distinguished from representation from one district or the other. We are assuming all segments of the party had an opportunity to submit delegates and promote the election of same as such the delegates to the state convention are representative of the entire state.

Endorsement of candidates for state offices is not a required legal or official function of the state convention, but is merely permissive and is recognized under section 16-04-04. Here again, on the assumption that valid processes were employed in selecting and electing delegates at the precinct caucuses to the district convention from which delegates were selected and elected to the state convention, we would conclude that the delegates to the state convention constitute a fair representation of the state as a whole and as such would not present any legal problem for the convention to convene and carry out its purpose as now constituted.

As to the district convention and its endorsement of candidates for the Legislature, we recognize a different situation. The district convention must consist of and have a fair representation of the party constituents within the district. Where the district has been substantially altered, the delegates to that convention would no longer represent the party within the newly formed district if chosen under the legislative districting plan prior to the Court Order dated June 29, 1972.

To promote fair elections and fair representation, only those persons who would be eligible to vote for or against the candidates for legislative offices should be permitted to endorse candidates for the Legislature at the district convention. To do otherwise would be contrary to the concept o fair elections and would do violence to the

Equal Protection Clause of the Fourteenth Amendment.

It thus necessarily follows that those districts which have undergone a substantial change as a result of the Court Order dated June 29, 1972, or in those instances where new districts were created, the membership of the district convention must be limited to those precinct committeemen and legislative office holders and delegates that reside within the newly constituted legislative district. It would be ideal to reinitiate the processes beginning with the precinct, but because of time and inconvenience and possibly confusion, we do not believe that the law requires or demands that this be done. We believe that if the district conventions limit participation to those delegates who reside within the newly formed districts, it will constitute substantial compliance with the law.

We are also mindful that endorsing conventions are not the only means y which the names of candidates can be placed on the ballot. The petitions route is also available. The endorsement process is merely a permissive method and not the sole method.

The district convention, for purposes of endorsing candidates to the legislative offices, does not have to be accomplished by the permanent organization of the new district. A temporary chairman and other officers can be designated for this purpose and any certificate presented to the * Secretary of State could be honored and would constitute sufficient basis for placing the names of those chosen to be candidates for the legislative offices on the primary ballot.

The comments and observations made above would specifically apply to those districts which underwent substantial changes. In determining what constitutes a substantial change, the concepts of the court and criteria used by the court would be appropriate for this instance. The court specifically enumerated certain newly formed odd-numbered districts in which the holdover senators will be up for election this year. Even though the court confined its determination to odd-numbered districts, the same criteria could be employed for other districts for purposes of determining whether or not a new district convention should be called to endorse legislative candidates where such convention was held prior to June 29, 1972. The newly created districts which we believe underwent substantial change by using the standard employed by the court would be as follows: District Numbers 3, 4, 7, 12, 14, 26, 27, 28, 30 and 31. (Within the limited time available we may have overlooked some districts).

As to the reorganization of the district committee, we envision considerable more difficulty. At the same time, we are aware that the Order of the Court dated June 29, 1972, is in a sense a "stop gap" provision and is only an interim provisional order redistricting and reapportioning the state until the court acts again. In this respect, the court has advised that it is seriously considering another redistricting reapportioning plan known as the Ostenson plan. In any event, it would appear that any reorganization accomplished at this time based on the newly constituted legislative districts would be in effect only months before a new plan would be put into effect which would again substantially change the geographic boundaries of the legislative districts. This is particularly true if the Ostenson plan will be adopted by the court, even with modification.

Reorganization, because of a stop gap or interim order, may not necessarily reflect and permit the party offices to function in the manner contemplated by law.

We are aware that the party offices are involved in numerous activities in addition to the official functions. Bringing information to the attention of the voters and financing campaigns are only some of the activities. These are "nonlegal". Nevertheless, they have been a part of the activities of the political party officers ever since their existence.

The Court assumed jurisdiction under the Equal Protection Clause of the Fourteenth Amendment. We are not aware that the courts have as yet assumed jurisdiction involving the internal affairs of political parties. This does not involve equal representation or equal protection in the sense commonly understood under the Fourteenth Amendment.

Being particularly aware that the reorganization would only be for a short period of time and the party would be performing "nonlegal" functions, we do not believe that it is necessary to reorganize. The question whether or not the district committee need be reorganized is as much a political question as it is a legal question under the present existing circumstances. Section 16-17-10 recognizes that if vacancies occur, the same may be filled or that a chairman services until a new chairman is selected or elected. The district offices do not have regular terms except by implication, which requires organization thirty days after the general election.

We would therefore conclude that the reorganization is not legally required now. The reorganization required in November is, of course, by statute and cannot be disregarded. We are cognizant the Legislature could not have foreseen the present situation, but maybe was aware that reapportionment was inevitable. Be that as it may, no provision has been made for the changeover.

We believe that the organizations as they exist now may function, except for endorsing legislative candidates as expressed earlier, but could and should take into account equitable concepts as to finances on hand and the purpose for which such finances were received. Equitable adjustment within the districts in this respect can be accomplished.

We are merely concluding that we cannot say that as a matter of law that the district committee be reorganized under the present situation until after the general election.

* Inadvertently stated Secretary of State,

but should be county auditor.

Sincerely yours,

Helgi Johanneson

Attorney General