

OPINION  
72-350

June 29, 1972 (OPINION)

The Honorable Ben Meier

Secretary of State

RE: State - Presidential Electors - Number

This is in response to your letter in which you ask for an opinion on the following:

"I would like to have your opinion as to whether the State of North Dakota is going to have four presidential electors or three on the ballot this year, as we are losing one Congressman. But at the same time, we will still have two United States Senators and two United States Congressmen until the first of the year.

"In your opinion would we have three presidential electors now or will this go into effect after the first of the year when the term of one of our Congressmen will expire and we will have only one Congressman?"

The answer to the question must be found in the United States Constitution and statutes: Article II Section I of the United States Constitution as is pertinent to the question provides as follows:

"Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each state shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. \* \* \*

It is thus observed that the number of electors is determined by the number of senators and representatives each state has in Congress. The constitutional provision does not specify the time or period in which the determination is made as to the number of senators or representatives to which each state may be entitled. It does not specify whether it is at the time of election or when the electors meet or some other time. This indicates that laws had to be enacted to implement the constitutional provision.

Congress has enacted laws to carry out and implement the concepts of the constitutional provisions. Title 3 Section 3 of the U. S. Code enacted by Congress provides as follows:

"Section 3. Number of Electors

The number of electors shall be equal to the number of Senators and Representatives to which the several states are by law entitled at the time when the President and Vice President to be chosen come into office; except, that where no apportionment of Representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of Senators and Representatives." (R. S. Section 132.)

It should be noted that the number of electors is determined by the number of senators and representatives the state will be entitled to when the president and vice president to be chosen come into office. This clearly illustrates that the number of electors is determined not on the basis of senators and representatives at the time of election, but rather at the time when the president and vice president take office. The president and vice president take office in January of 1973, Apportionment of representatives has been made based on the 1970 federal decennial census resulting in the reduction of representatives for the State of North Dakota from two to one. In January of 1973, the State of North Dakota will have two senators and one representative.

It is therefore our opinion that the State of North Dakota is entitled to elect and be represented by three presidential electors.

HELGI JOHANNESON

Attorney General