

OPINION
74-203

August 29, 1974 (OPINION)

The Honorable Arthur A. Link
Governor
State of North Dakota
State Capitol
Bismarck, ND 58505

Dear Governor Link:

This is in reply to your letter of August 27, 1974, relative to Section 1-03-01 of the N.D.C.C., as amended. You state the following facts and questions:

"This is to request a clarification of your letter of October 29, 1973, to Raymond R. Rund concerning Section 1-03-01 of the North Dakota Century Code as that opinion was primarily in response to questions on political subdivisions and did not specifically address state offices.

"Section 1-03-01 of the North Dakota Century Code states that:

'Holidays are as follows:

1. Every day on which an election is held throughout the state.'

"However, a subsequent provision in the same section provides that:

'All state offices and offices of political subdivisions in the state shall remain open for business as usual on election days.'

"It is apparent that the two provisions conflict: Either a statewide election day is a holiday (as provided in subsection 11) for state employees or a statewide election day is not a holiday (as implied by the subsequent provision) for state employees. This distinction is important as several state agencies' personnel policies have provisions granting their employees time-and-a-half or compensatory time for work on holidays.

"Therefore, your opinion is requested on the following:

Is a day on which an election is held throughout the state a holiday for state employees?"

While, as you note, the letter of October 29, 1973, to Mr. Rund was primarily concerned with employees of political subdivisions, the provisions of Section 1-03-01 do not draw a distinction between the state employees and employees of political subdivisions for purposes of the question presented herein. The letter to Mr. Rund states, page 3:

"The command that offices of the state and political subdivisions be open for business means that the office must be open and manned by sufficient personnel so as to conduct business. It does not necessarily imply that the office be fully staffed. The head of the office may determine the number of person to report for work so that the work of the office may divide the day into shifts so as to permit every person to vote if such person so desires. The number of persons required to perform the services is a judgment factor which must be left to the discretion of the head of the office. The head of the office in this regard is entitled to considerable leeway provided there is substantial compliance with the requirement that the office be open for business."

The rationale of this statement is, we believe, applicable equally to state employees as well as employees of political subdivisions of the State.

Insofar as the conflict between the provisions of the statute is concerned, we stated, in the october 29, 1973 letter, after reciting the provisions of Section 1-02-08, 1-02-09 and 1-02-09.1 of the N.D.C.C. relative to the reconciliation of statutes:

"The culminative effect of the individual statutes requires that every effort be made to reconcile the conflicting provisions without doing violence to either one or the other. This becomes the primary concern.

"It appears apparent that the legislature intended the days on which a statewide election is held to be a holiday for the purpose of permitting and allowing every person to exercise the elective franchise if so inclined. At the same time, it becomes apparent that the legislature intended that the state offices and offices of political subdivisions be open for business."

Had the legislature intended that the offices not only be open for business as usual but that all employees, except those taking annual leave, report for work as usual, we believe they would have so stated. Instead, as noted above, the statute merely provides that the offices will remain open for business as usual on election days.

We further note that this office is unaware of any personnel policies, other than the Governor's Personnel Policy, and we are unable to comment on the specific provisions thereof.

In direct response to your question, it is our opinion that a day on which an election is held throughout the state is a holiday for state employees subject to the provision that all state offices must be open for business as usual as explained in our letter of October 29, 1973, quoted above. Thus we conclude that it is the responsibility of the individual department head to determine how many employees, which employees, etc., will work on election day. The department head may allow compensatory time for those working on election day within the guidelines of federal law.

Sincerely yours,

ALLEN I. OLSON

Attorney General