

OPINION
74-212

February 19, 1974 (OPINION)

Mr. Ben Meier
Secretary of State
State Capitol
Bismarck, ND 58501

Dear Mr. Meier:

This is in response to your letter in which you make reference to the Decision of a three judge panel dated January 30, 1974, in the case entitled Chapman et al. v. Ben Meier, Secretary of State, Civil No. 4664. You observe that the Decision did not make any mention as to which legislative districts will be electing senators in the ensuing election.

You request an opinion specifically on the question which legislative districts will be electing senators this year and also which senators will be considered holdovers, if any.

As you observed, the Decision dated January 30, 1974, does not make any reference to the question as to which legislative districts will elect senators or whether any senators will be holdovers. The Decision concludes with the following: "We adopt the court plan of reapportionment previously adopted as an interim plan on June 29, 1972, as set forth in Appendix A of that Order as the permanent plan for reapportionment for the State of North Dakota."

In examining the Decision and Order of June 29, 1972, we find the following pertinent provision:

"The Dobson Plan calls for an increase in representation in District No. 5 (Minot and vicinity and the Minot Air Force Base); in District 18 (Grand Forks city and vicinity and the Grand Forks Air Base); and in District 21 (Fargo and Southwest Fargo vicinities). Each of these districts is entitled to one additional senator and two additional representatives. In Districts 5 and 21, the electorate chose its senators for a four year term in 1970. To avoid any disruption in the election processes and the nature of the representation to which those districts are entitled, we direct only that the one additional senator and the two additional representatives shall be elected from each of these districts "in 1972. The senators elected in 1970 from each of these odd numbered districts shall hold office for an additional two years, the period for which they were elected. The voters in District 18 (Grand Forks city and vicinity), an even numbered district, will, of course, be called upon in 1972 to choose all of their legislative representation, including the one additional senator and the two additional representatives provided for by the Dobson Plan.

"Senators elected in 1970 in the remaining odd numbered districts would ordinarily be entitled to serve out a four year term. We have made substantial changes, however, in the composition of the former

3rd, 7th, 27th, and 31st legislative districts, 5/ and we have eliminated any designation of a 13th legislative district, that district having been incorporated into other districts. Because of these changes, we direct that the senators presently serving these odd numbered legislative districts under the 1965 apportionment, namely the 3rd, 7th, 13th, 27th, and 31st districts, shall be entitled to hold their present offices only until December 1, 1972. See Section 41, N.D. Constitution, as amended. We order and direct, therefore, that in these senate districts numbered 3, 7, (omitting 13 for reasons previously stated), 27 and 31 there shall be an election of a state senator in 1972 to represent said districts as reconstituted under the Dobson Plan. The senators elected from these particular odd numbered districts shall serve for two years only, their terms ending at the same time as the terms of present holdover senators from other odd numbered districts.

"All other senators now serving in odd numbered districts may continue to serve out their term of office since the districts which they represent have not been materially altered under the Dobson Plan. We perceive no valid reason, therefore, to hold another election in 1972 for state senator or senators in these districts.

"No serious problem for the 1972 elections seem likely to arise from proposed changes in the boundaries of several even numbered districts under the Dobson Plan since the terms of senators last elected from all even numbered districts will expire this year. In each even numbered district, as changed by the Dobson Plan, the electors in 1972 will select a senator or senators as well as house members to represent them during the next legislative session.

"We approve the Dobson Plan of reapportionment at this time for the 1972 election only. This court retains jurisdiction of this cause for the purpose of adopting a different plan of reapportionment which will not be hampered by considerations of impending elections. We add a caveat regarding the candidates for state senate filing for a four-year term in the 1972 elections. In the event that we hereafter adopt a different plan of reapportionment which substantially changes the boundaries of legislative districts, it may be necessary to require that all state senators stand for election in 1974 as was the case in *Paulson v. Meier*, supra, at page 52."

The Court in effect continued the staggering terms established by another three-judge panel in the case of *Paulson v. Meier*, 246 F. Supp. 36 (1965). The Federal Court in the *Paulson v. Meier* case, established "new" staggered terms. This was necessary because the court also provided that in every legislative district the Office of Senator was up for election. No "holdover" senators were permitted under the 1965 court fashioned plan. The Court provided for the manner in which the four and two-year terms were to be established in the following language in 246 F. Supp. 36 page 52:

"The senators shall be divided into two classes, those elected in legislative districts designated by even numbers shall constitute one class, and those elected in legislative districts designated by odd numbers shall constitute the other class. The senators of one class elected in the first election held under the provisions of this Legislative Apportionment law

shall hold their office for two years, those of the other class shall hold their office four years, and the determination of the two classes shall be by lot, so that one-half of the senators, as nearly as practicable, may be elected biennially. The president of the senate shall perform the lot in the presence of the majority and minority floor leaders of the senate within ten days after the commencement of the first session of the Legislative Assembly of this state which is comprised of senators elected hereunder, and shall certify in writing the results of such lot to the Secretary of State within five days after its performance."

By the foregoing provision, the determination by lot was to be accomplished in the presence of the Majority and Minority Floor Leaders by the President of the Senate. According to the Journal of the Senate, page 54 of the 1967 Session, this was in fact accomplished, and it was determined by a toss of the coin that the senators elected in 1966 in odd numbered districts will have 4 year terms and those elected in even numbered districts will have 2 year terms. The Senate Journal contains the following:

"Lieutenant Governor: According to the decision of Paulson v. Meier, 246 Federal Supplement, page 36, which decision was handed down August 10, 1965, the pertinent part applicable to us here today, is as follows:

"The Senate shall be divided into two parts, those elected in legislative districts designated by even numbers shall constitute one class, and those elected in legislative districts designated by odd numbers shall constitute the other class. The Senators of one class elected in the first election held under the provisions of this legislative apportionment law shall hold their offices for two years, those of the other class shall hold their office four years, and the determination of the two classes shall be by lot, so that one-half of the Senators, as nearly as practical, may be elected biennially. The President of the Senate shall perform the lot in the presence of the majority and minority floor leaders of the Senate within ten days after the commencement of the first session of the legislative assembly of this state which is comprised of Senators elected hereunder, and shall certify in writing the results of such lot to the Secretary of State within five days after his performance.

"The procedure in casting this lot will be by tossing a coin. The even numbered districts will be heads and the odd numbered districts will be tails. The winners of the toss shall receive four year terms. Let the record show that Senator Lips and Senator Meschke came to the rostrum and that the coin, a fifty cent piece, was displayed to them by the Lieutenant Governor, and that the Lieutenant Governor tossed the coin.

"The result of the toss shows tails and therefore the odd numbered districts will have four year terms and the even numbered districts will have two year terms.

"Senator Schultz moved that the absent Senators be excused, which

motion prevailed.

"Senator Lips moved that the Senate adjourn, which motion prevailed."

Thus, the Senate terms were established in the 1967 Legislative Assembly for the senators elected in 1966.

In examining the decision of the three-judge panel dated June 29, 1972, particularly the portion quoted above, it is noted that the Court in effect continued the terms for senators in the various legislative districts as established by the Federal Court in August of 1965. The only exceptions made to the prior determination of terms pertained to those odd numbered districts which underwent substantial changes. The 3rd, 7th, 27th and 31st legislative districts were required to elect senators but only for a two-year term, thus retaining the staggered terms established under the 1965 court fashioned plan and determined by the Senate as evidenced on page 54 of the 1967 Journal of the Senate.

The Decision and Judgment dated January 30, 1974, in effect continued the terms as used in the court fashioned plan dated June 29, 1972, which was a continuation of the staggered terms previously established in Paulson v. Meier in 1965.

The first election under the court fashioned plan of 1965 was in the year 1966. Those senators elected in the year 1966 at the time of election did not know whether the term would be for two or four years. That question was resolved during the Legislative Assembly in 1965 as evidenced by the entry on page 54 of the Senate Journal.

Because the Court in its Decision and Judgment dated January 30, 1974, made no mention of the terms for the senators, we must conclude that the Court actually adopted the terms established previously. Inasmuch as the Decision of January 30, 1974, was a continuation of the interim plan of 1972, there existed no need to make any mention of the Senate terms.

House Bill 1042, Chapter 411, 1973 Session Laws, which also contained a new method of staggering terms because under it all senators were up for election, was referred and defeated in a special election in 1973, and as such it has no legal significance and is not taken into consideration in resolving the questions submitted.

It is therefore our opinion that the senators elected in even numbered districts in 1972 are senators with a four-year term and would not be considered holdovers. It is our further opinion that legislative districts with odd numbers will be electing senators this year for a four-year term. This would also include those senators elected in 1972 in the following odd numbered districts: 3, 7, 27 and 31.

I trust this answers your inquiry.

Sincerely yours,

ALLEN I. OLSON

Attorney General