OPINION
75-50

September 19, 1975 (OPINION)

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, ND 58505

Dear Mr. Meier:

This is in reply to your letter of September 16, 1975, in which you set forth the following facts and questions:

> "I am requesting your opinion on the referral petitions that were filed in my office by the petitioners, referring the appropriation of the University of North Dakota that was enacted by the 1975 legislative assembly. They were filed by the petitioners and I found them to have sufficient signatures to be placed on the ballot.
>
> "Since these petitions were filed in my office, the Supreme Court has ruled that these petitions will not suspend the appropriation of the University of North Dakota.
>
> "I would like to have your opinion now as to whether or not I have to certify them out to the county auditors at the next statewide election, to be placed on the ballot so that the electorate can vote on this matter."

If the referred measure were to be voted on by the electorate and if the appropriation were not approved, the appropriation of the University for the current biennium would, as a practical matter, cease, for the reason that the people refused to fund those operations. However as you have noted, the Supreme Court of North Dakota in State ex rel. Walker v. Link _____ N.W.2d. _____ (1975) stated, with reference to the appropriation in question, that "neither the Legislature nor the people can, without a constitutional amendment, refuse to fund a constitutionally mandated function." The Court referred to a constitutional requirement at Article 54 of the Constitution of North Dakota that required the University of North Dakota be provided "adequate funds" to assure its continuing operation.

There exists no initiated measure providing for a constitutional amendment suspending the operation of the University nor is there an initiated measure proposing an alternative or substitute appropriation for the University that would assure "adequate funds" for its continuing operation. It is therefore our opinion that the above-cited decision has determined that a negative vote on the referred measure will not stop the funding of the University of North Dakota.

Because it is apparent that a vote disapproving the legislative appropriation in question will not halt the funding of the operations of the University of North Dakota, submission of the question to the

electorate will amount to nothing more than a plebescite or "straw vote." The Supreme Court of North Dakota in State ex rel. Askew v. Meier 231 N.W.2d. 821 (1975) indicated that while a plebescite or straw vote is a permissible method of petitioning for redress of grievances under the state and federal constitutions, the intent of the particular measure must be for that purpose, but where a measure is referred to the people by means of a petition requiring that it be placed on the ballot "for approval or rejection by the electors" and that meanwhile its operation "be in all things suspended" such is not language indicative of an intention to hold a straw vote or nonbinding plebescite. This very language appears in the referendum petition in question. Hence it would not appear that the intent of the petitioners is to conduct a straw vote or plebescite relative to the appropriation for the operation of the University.

In State ex rel. Askew v. Meier the Supreme Court concluded that the referral petition in question would be ineffectual to require a referendum. It would appear that the same conclusion would apply to the referendum petition concerning the University appropriation.

The Supreme Court of North Dakota has indicated, with regard to certifying names of nominated candidates to county auditors for placing on election ballots, that where the nominating petitions appear proper as to form and the requisite number of signatures are contained thereon, it is the administrative duty of the Secretary of State to certify the nominations to the county auditors. See, State ex rel. Plain v. Falley 76 N.W. 996 (N.D. 1898); State ex rel. Cooper v. Blaisdell 118 N.W. 225 (N.D. 1908). It would appear that the same conclusions would apply to the matter presently considered were it not for the decision in Walker. While the Secretary of State is required to pass upon the sufficiency of the petitions, as provided at Section 16-01-11.1, N.D.C.C., he does not have the discretion to refuse to place a measure on the ballot where the petitions are sufficient as to form and style, and contain the required number of valid signatures.

While State ex rel. Walker v. Link did not rule on the issue of whether the Secretary of State should be enjoined from placing the referred measure on the ballot as did the Court in Askew the Court did, as indicated above, rule with respect to the effect of the referral petition. The Walker decision which rules on the specific referendum petition in question coupled with the Askew decision leads us to the conclusion that should an action to enjoin the Secretary of State from placing the referred measure on the ballot be instituted the Court would direct that the measure not be placed on the ballot. It is therefore our opinion that since the vote on the measure would be ineffective to accomplish any practical legal result, the referred measure should not, following the Askew decision, be placed on the ballot.

Sincerely,

ALLEN I. OLSON

Attorney General