

**OPINION  
76-86**

April 9, 1976           (OPINION)

Mr. Ben Meier  
Secretary of State  
State Capitol  
Bismarck, ND 58505

Dear Mr. Meier:

This is in reply to your letter of February 17, 1976. You refer to Section 74 of the North Dakota Constitution, and you ask whether a person may file a petition of endorsement or a certificate of endorsement for governor with your office without having the name of the lieutenant governor on the same petition or certificate, or, conversely, whether a person may file for lieutenant governor without having obtained a running mate for governor.

Section 74 of the Constitution of North Dakota provides as follows:

Section 74. The governor and lieutenant governor shall be elected upon a joint ballot by the qualified electors of the state beginning with elections held in 1976. A single vote shall be cast upon a joint ballot by each qualified elector for the joint candidates representing the political party or affiliation of his choice. The joint candidate having the highest number of votes shall be declared elected, but if two or more joint candidates shall have an equal and highest number of votes for governor and lieutenant governor, the two houses of the Legislative Assembly at its next regular session shall forthwith in joint session choose one pair of such joint candidates for said offices. The returns of the election for governor and lieutenant governor shall be made in such manner as shall be prescribed by law.

There are approximately twenty states that provide for the election of the governor and lieutenant governor on a joint ballot, wherein one vote is cast by an elector for both candidates. Like North Dakota, most of these states have only recently amended their constitutions to provide for the joint election of these two executive officers. We have been able to find only one court decision in which the issue you have raised has been considered. This is the New Mexico case of *State ex rel. Chavez v. Evans*, 446 P.2d. 445, a 1968 decision out of the Supreme Court of New Mexico. The New Mexico constitutional provision is very similar to that of North Dakota. It provides as is relevant as follows: "The governor and lieutenant-governor shall be elected jointly by the casting by each voter of a single vote applicable to both offices." (New Mexico Constitution, Article 5, Section 1). The New Mexico court construed that constitutional provision as follows:

We believe it was the intention of the people of the state, in amending sections 1 and 2 of article 5, to require that the governor and lieutenant governor be voted on as a unit. Lacking one of them, namely, the governor, there can be no

candidate for lieutenant-governor by himself, \* \* \*

Thus the New Mexico court concluded that its constitutional provision required that a candidate for lieutenant governor must also select a running mate for governor in order for his name to appear on the ballot.

Section 74 appears to have its roots in the proposed constitution submitted to the people by the 1972 constitutional convention. A similar provision was found at Article 5, Section 1 of that proposed constitution. While the deliberations of the assembled delegates to the constitutional convention of 1972 may have no direct relationship with the present provisions of Section 74, (which originated with senate concurrent resolution 4031 of the 1973 Session of the Legislative Assembly, and was thereafter submitted to the people and approved on November 5, 1974) statements made by delegates to that convention and transcribed in the volume of "Debates of the North Dakota Constitutional Convention of 1972" reflect the basic purpose of changing the format of selecting the governor and lieutenant governor from one in which these two officers were elected separately (and with the possibility that each would be from a different political affiliation) to one in which they would be elected jointly (and consequently, from the same political affiliation). This purpose would appear to also reflect the intent of the Legislative Assembly in submitting the proposed constitutional provision to the people, and, ultimately the intent of a majority of the electors voting upon the proposed amendment to Section 74 at the November, 1974 general election.

Furthermore, to allow a person to have his name placed on the ballot as a candidate for governor or lieutenant governor, as the case may be, without also having selected a running mate for the other office, could ultimately result in a candidate for governor from one political affiliation being elected to that office without having selected a candidate for lieutenant governor, and a candidate for lieutenant governor from a different political affiliation being elected to that office without having selected a running mate for governor. The result would be that the elected governor and lieutenant governor would be from different political affiliations. This is exactly the situation that has been sought to be avoided by the constitutional amendment in question.

However the language used in Section 74 is oriented toward the election of the governor and lieutenant governor rather than the nomination of candidates for those offices. We find no requirement that a candidate for party nomination for either of these two offices must select a running mate in order to appear on the primary election ballot. The primary election is a nominating procedure, and in this instance, the party candidates receiving the highest number of votes for the offices of governor and lieutenant governor, respectively, will be the party's joint candidates, appearing as such, on the general election ballot.

Section 74 provides that the returns of the election for governor and lieutenant governor shall be made in such a manner as shall be prescribed by law. The legislative assembly has not enacted legislation relative to this subject, and in the meantime, we have

attempted to construe the intent of the people as expressed in Section 74 in the way that appears compatible with the language used in that amendment and with the electoral tradition of the state.

It is therefore our opinion that the names of qualifying persons may be placed on the primary election ballot as candidates for nomination for the offices of governor and lieutenant governor without the requirement that a running mate be selected. The primary election ballot will not be set up in such a manner that candidates for nomination for those offices be selected jointly. Rather, the candidates for nomination for each office will be selected separately.

It is, however, our further opinion that Section 74 of the Constitution requires that the general election ballot contain the names of joint candidates for the offices of governor and lieutenant governor. The persons receiving the highest number of votes as candidates for these offices in the primary election will be the joint candidates for their respective parties on the general election ballot. In the case of independent candidates, the Secretary of State shall refuse to place the name of any candidate for either of these offices on the general election ballot unless the petitions also contain the name of a joint candidate for the other office.

Sincerely,

ALLEN I. OLSON

Attorney General