

OPINION
76-89

January 22, 1976 (OPINION)

The Honorable F. Daniel Rylance
State Representative, 18th District
924 Sunset Drive
Grand Forks, ND 58201

Dear Representative Rylance:

This is in reply to your letter of January 7, 1976, relative to the organization of the political parties of the legislative districts. You state the following facts and questions:

"With the recent federal district court decision on reapportionment now promulgated, the city of Grand Forks, the Grand Forks Air Force Base and Grand Forks township, have been reapportioned from a multisenate district (18th district) into four single senate districts (17, 18, 42, 43).

"Both as a duly elected representative of the old 18th district of Grand Forks and a duly elected precinct committeeman of the old 18th district (Ward 2, Precinct 2), I request a formal decision from your office regarding my previous status as a duly elected representative and precinct committeeman of the old 18th district to the newly created 43rd district.

"Since the majority of my specific questions, in part, center on the current status of the old 18th district, it seems appropriate to specifically ask you what the status of the old 18th district is since the recent federal district court decision on reapportionment. Is it total void, operative to the next election or a transition stage both for duly elected legislators and precinct committeemen until the next election?

"Listed below are specific questions relating to the offices I hold that I would appreciate specific opinions on:

1. Am I still an elected representative of the old 18th district, the new 43rd district, both or none?
2. Am I still an elected precinct committeeman of the old 18th district (Ward 2, Precinct 2), the new 43rd district (Ward 2, Precinct 2 which still exists by city statute), both or none?
3. Can only those who were elected as precinct committeemen in 1974, or who were Democratic N.P.L. candidates for the legislature from the old 18th district at the last election at which the post was up for election, be eligible to vote in reorganization matters and election of new district officers in districts 17, 18, 42, 43?
4. Must vacancies for precinct committeemen be filled in new legislative districts which altered ward and precinct lines

before election of new district officers is decided?

"Since a reorganization meeting has been called for districts 17, 18, 42, and 43 of the Democratic N.P.L. party in Grand Forks for January 26, 1976, I would appreciate, if at all possible, to receive answers to my questions before that date from your office."

We note the opinion of the three judge Federal District Court which heard this matter was filed on December 17, 1975, and, on page 2 thereof states in part:

"This plan, as described in this order and in Appendix A attached, is effective on the date of this filing and governs election proceedings for the state legislature to be elected in 1976 and thereafter until such plan may be duly and lawfully modified or changed."

On page 3 of the opinion the Court states:

"Except as specifically altered by this reapportionment plan, provisions of North Dakota law shall govern the 1976 and subsequent elections to the state legislature."

Insofar as your question on your status as a state representative is concerned, we do not believe the opinion of the Court alters that status until such time as the 1976 elections are held. Thus you continue to hold the office of state representative until that time.

With regard to the status of the "old 18th District" it is obvious from the opinion of the Court that with respect to the election of legislators the old 18th district does not exist for the 1976 elections.

Insofar as your first listed question is concerned, it might be an entertaining philosophical discussion as to whether you are an elected representative of the old 18th District, the new 43rd District, both or none. However for the purposes of the question as stated, it would appear to make little legal significance insofar as noted above, you remain a state representative until the 1976 elections. With regard to the question of whether you are, by statute, a member of the District Committee, however, a more pertinent question arises. In this connection Section 16-17-09 of the N.D.C.C., as amended, by the 1976 Legislative Session, provides:

DISTRICT COMMITTEE OF POLITICAL PARTY - HOW CONSTITUTED. - The precinct committeemen of a party, elected or appointed as provided in this chapter, together with the nominees for, and the members of the legislative assembly of that party, shall constitute the district committee of such party. The district committee upon a majority vote of its members may appoint any former member of the legislative assembly as an ex-officio member of such district committee. The district committee of a party shall be organized to coincide with the geographical boundary lines of a state senatorial district. In no event shall any person be allowed more than one vote."

For purposes of considering whether a legislator or nominee for the legislature who, because of legislative reapportionment, is a member of the district committee in the new district in which he resides, we believe the answer to be affirmative, i.e., even though the legislator or nominee for the legislature, because of reapportionment, resides in a district which is newly created he is a member of the district committee of that district.

With regard to your second question, the answer may be of less significance, insofar as the district committee is concerned, because of our reply to your previous question. Since you would already be a member of the new 43rd district committee by virtue of your holding office as state representative, you would not be entitled to more than one vote even though you might also continue to hold office as a precinct committeeman. However it appears to us that if the precinct of which you are precinct committeeman remains intact, you would continue to hold office as a precinct committeeman. We realize that this answer would not necessarily be applicable in all situations, since the lines of the precincts may have been altered by the reapportionment decision or may be altered because of realignment of precincts due to the reapportionment plan.

With respect to your third and fourth questions, we have already indicated that legislators, nominees for the legislature and precinct committeemen whose precincts have not been changed because of reapportionment, would constitute members of the new legislative district committees. Section 16-17-08 of the N.D.C.C. provides:

"VACANCIES IN OFFICE OF PRECINCT COMMITTEEMAN - FILLING. - A vacancy in the office of precinct committeeman shall be filled by appointment from such precinct by the district executive committee of such party."

While it may be argued that such statute has application only to those vacancies caused from "normal" circumstances and not those brought about by the creation of new precincts as a result of reapportionment, nevertheless this is the only statute on filling vacancies of precinct committeemen. As such, it would seem more logical that the members of the district committee which survive reapportionment would first take steps to fill those vacancies in the office of precinct committeeman and then proceed to an election of new district officers. It would not seem logical for the surviving members of the district committee to elect officers before the vacancies in the position of precinct committeeman are filled.

We would further note that in 1972 this office issued an opinion to Jack Huss, Chairman of the North Dakota Republican State Committee concerning the need for reorganization of districts following the announcement of a court-ordered reapportionment plan on June 29, 1972. We note in that instance the state conventions were about to convene and time to reorganize was considerably less than that permitted at the present time. In that opinion this office indicated, with respect to the state convention, that no need to reorganize existed. However with respect to the district convention, which may endorse candidates for the legislature, we state that in those districts which had undergone a substantial change as a result of the court-ordered reapportionment, or in those instances where new

districts were created, the membership of the district convention must be limited to those precinct committeemen and legislative office holders and delegates that reside within the newly constituted legislative districts. A copy of that opinion is enclosed herewith. Again, we note that the time issue involved in that instance, which prevented for the most part a reorganization of the districts before the conventions, may not be present in this instance where there would appear to be sufficient time to reorganize those districts which are either newly created or have been substantially altered by the court-ordered reapportionment.

I am also enclosing a copy of a letter dated July 11, 1966, to Mr. Harvey C. Larson, Chairman, Burleigh County Republican Party, and a letter dated May 6, 1974, addressed to Mr. Allen C. Young, State Chairman, North Dakota Republican Party. These letters are concerned with procedures for determining the number of precinct committeemen to be elected when precinct boundaries are changed and establishing some guidelines for same.

Sincerely,

ALLEN I. OLSON

Attorney General