

**OPINION
78-147**

October 25, 1978 (OPINION)

Honorable Raymon E. Holmberg
District 17
1701 Riverside Drive
Grand Forks, ND 58201

Dear Senator Holmberg:

This is in response to your letter of October 18, 1978, wherein you state the following:

This is to request an opinion from your office regarding the following situation:

The Memorial Union at the University of North Dakota operates a sign service, which makes available and prepares, a painted banner which is stretched across University Avenue in Grand Forks for various purposes.

The banner is available to any University recognized organization on a first come - first served basis, although such organization must pay the costs of preparing the banner. In the past, the banner has been used to promote, among other things, events of a religious nature sponsored by campus churches, guest speakers appearing on and off campus, and other activities of general concern.

Sign Services has a policy of preparing the banner for any campus organization that request it, assuming they reserve the space early enough, and they pay for it. However, in 1976 a University recognized campus political organization reserved and paid for the banner which they used to urge students to vote for a particular candidate for political office. The administration of the University notified Sign Services and insisted the banner be taken down.

This same organization has again reserved the banner, and have been told by Sign Services that they will make the banner, but will leave it up only until ordered otherwise by the administration.

The administration apparently believes that to allow a group to use the service for a candidate would violate Section 16-20-01.1 of the North Dakota Century Code.

We would maintain, on the other hand, that Section 16-02-01.1 does not apply to the states college and universities.

By way of further explanation, other services and facilities at the University are freely available for any political purposes. For example, College Republicans and University Democrats may use meeting rooms in the Memorial Union free of charge, and for

any type of meeting. Those organizations can use the Union's booths, or set up tables in the Union to promote candidates, and bulletin boards throughout campus are available for the organizations to post other written material for or against candidates for political office. Students in University housing exercise unrestrained right to display yard signs in front of their homes.

Your opinion as to the propriety of such conflicting standards and the applicability of Section 16-20-01.1 would be greatly appreciated.

Section 16-20-01.1, N.D.C.C. Supplement, provides as follows:

16-20-01.1. USE OF STATE SERVICES OR PROPERTY FOR POLITICAL PURPOSES.

1. No person shall use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or any agency, department, bureau, board, or commission thereof, for any political purpose.
2. The following definitions shall be used for the purposes of this section:
 - a. "Property" shall include, but is not limited to, motor vehicles, telephones, typewriters, adding machines, postage or postage meters, funds of money, and buildings. However, nothing in this section shall be construed to prohibit any candidate, political party, committee, or organization from using any public building for such political meetings as may be required by law, or to prohibit such candidate, party, committee, or organization from hiring the use of any public building for any political purpose if such lease or hiring is otherwise permitted by law.
 - b. "Services" shall include, but is not limited to, the use of employees during regular working hours for which such employees have not taken annual or sick leave or other compensatory leave.
 - c. "Political purpose" means any activity directly undertaken by a candidate for any office in support of his own election to such office, or aid and assistance to any candidate, political party, political committee, or organization but shall not include activities undertaken in the performance of a duty of state office.

Section 16-20-01, N.D.C.C. Supplement, provides that the use of state property or services for political purposes constitutes a corrupt practice.

Section 16-20-01.1, N.D.C.C. Supplement, was enacted in the 44th Session of the Legislative Assembly (S.L. 1975, ch. 187, Section 2).

It is our opinion that this section was not intended to apply to the fact situations you described in the body of your letter. If any of these fact situations constituted a violation of Section 16-20-01.1, N.D.C.C. Supplement, they would be violations.

We reach this conclusion noting that institutions of higher learning have a great interest in guarding the elements of academic freedom. One such element is freedom of expression. Had the Legislative Assembly intended to limit the political activity of students and recognized campus organizations, we are certain that such intention would have been clearly expressed. Indeed, if this section were construed to apply to institutions of higher learning, campus organizations such as University Democrats and College Republicans could not be "recognized campus organizations."

Our conclusion, however, that Section 16-20-01.1, N.D.C.C. Supplement, does not apply to institutions of higher learning should not be construed to mean that there are no limits to the use of such property for political purposes. Section 185 of the North Dakota Constitution prohibits the state from making gifts or donations to or in aid of any individual, association, or corporation. Furthermore, the indiscriminate and free use of institution services for political purposes may constitute a violation of Sections 12.1-23-03 and 12.1-23-07, N.D.C.C.

Finally, we wish to point out that the Board of Higher Education does have authority to establish policies concerning the use of the property and services of institutions under its control. Presumably, such policy making authority could also be delegated to the administrators of the individual institutions. Policies could be adopted regarding the use of the property and services of these institutions provided that such policies do not discriminate against any political organization, individual or belief.

I trust that this will sufficiently answer your inquiry.

Sincerely,

ALLEN I. OLSON

Attorney General