

**OPINION  
78-52**

July 14, 1978           (OPINION)

Mr. Jonathan Thomson  
Executive Director  
Republican State Committee  
Box 1917  
Bismarck, ND 58501

Dear Mr. Thomson:

This is in reply to your letter of July 13, 1978, in which you state the following facts and questions:

"With the Primary election approaching shortly our precinct committeemen/women will be filing their petitions with their county auditor 40 days prior to September 15th.

"There seems to be confusion as to whether or not the precinct committeemen/women must file a Financial Disclosure Statement with their petition. May I have a written opinion as to whether a Financial Disclosure Statement must be filed with their election petition? I would appreciate this information as soon as possible since filing dates are very soon."

The financial disclosure statement is required by Chapter 16-22 of the North Dakota Century Code, as amended. Section 16-22-02 of that chapter provides in part:

"Every candidate for elective office shall file a statement of interests as required by this chapter. \* \* \* A candidate for election as a member of the legislative assembly and for offices other than statewide shall file the statement of interests with the county auditor. . .of the candidate's county . . . of residence."

The term "candidate for elective office" as used in the above cited section is not further defined therein.

Section 16-17-01 of the North Dakota Century Code provides:

"ELECTION OF PRECINCT COMMITTEEMEN. At the party primary election commencing with the year 1966, and each fourth year thereafter, there shall be elected as hereinafter provided by the qualified electors of each political party from each voting precinct, committeemen to represent such political party."

Whether it was the intention of the Legislature to include precinct committeemen within the term "candidate for elective office" as used in Section 16-22-02 may be open to question. However, we note Section 16-22-01, which sets forth the declaration of policy adopted by the Legislature relative to the requirement of the financial disclosure statement, provides:

"DECLARATION OF POLICY. The legislative assembly declare that

public office is a public trust, and, in order to continue the faith and confidence of the people of the state in that trust and in their government, that the people have a right to be assured that the interest of holders of or candidates for public office present no conflict with the public trust."  
(Emphasis ours)

While the Legislature has provided the machinery for the election of precinct committeemen within the respective political parties, we have serious doubts that by so doing the precinct committeeman has become a "public officer" as that term is used in Sections 16-22-01 and 16-22-02 of the North Dakota Century Code. The precinct committeeman is a party officer and not a public officer. In State ex rel. McArthur v. McLean, 159 N.W. 847 (N.D. 1916), the North Dakota Supreme Court held that a "public office" is a public position to which a portion of the sovereignty of the country, either legislative, executive or judicial, attaches for the time being, and which is exercised for the benefit of the public. The Court further held that the chairman of a state central committee of a political party possesses no such authority and is therefore not a "public officer." We believe the same rationale is applicable to the precinct committeeman of the political party. If we are wrong in our conclusion, we believe it is the obligation of the Legislature to amend the statutes to clarify this matter as they desire. However, in view of the rather widely accepted fact that political parties, generally, have a somewhat difficult time in securing persons to serve as precinct committeeman, we do not believe this office should make that task even more difficult since the precinct committeeman does not appear to be a "public officer" as that term is used in Chapter 16-22 of the North Dakota Century Code.

In direct response to your question, it is our opinion that a candidate for precinct committeeman of a political party need not file a Financial Disclosure Statement with their petition to have their name placed on the ballot for that position.

Sincerely,

ALLEN I. OLSON

Attorney General