

OPINION
78-67

October 16, 1978 (OPINION)

Mr. Donavin L. Grenz

Emmons County State's Attorney

Box 637

Linton, ND 58552

Dear Mr. Grenz:

This office is in receipt of your letter of September 28 wherein you state the following:

Three candidates ran for the position of Emmons County Register of Deeds in Emmons County in the primary election. The incumbent Register of Deeds was defeated, but plans to continue her bid for reelection through a sticker and write-in campaign. Neither of the successful primary candidates have withdrawn from the election and therefore there is no vacancy. Based upon my research, the defeated primary candidate is not prohibited from running for reelection even though her name will not appear on the ballot. However, many of the precinct judges have informed the incumbent that in the past the practice has been to allow stickers to be placed either on the judges table or in the voting booths.

In my opinion, under the circumstances hereinbefore set forth, it would appear that the placing of the incumbent's stickers in the polling place would be in violation of Section 16-20-19 N.D.C.C. The Attorney General's opinion on this matter, of which I am aware, was issued on June 15, 1948, seems to support my conclusion.

Please issue your opinion as to the following questions:

1. Can the judges of the election or any other person make the incumbent's stickers available at their respective polling places on the general election day provided they receive the same prior to election day?
2. If so, how must the stickers be handled and where can they be placed?
3. Can the stickers, in addition to the name of the incumbent candidate, contain the words "Register of Deeds" or a variation thereof?
4. Do the stickers constitute a political advertisement under Section 16-20-17.1 which must disclose the name and address of the sponsor.

Several Sections of the North Dakota Century Code are relevant to

your inquiry.

16-05-08. VACANCY OCCURRING ON BALLOT BEFORE ELECTION DAY AFTER BALLOTS ARE PRINTED - STICKERS USED. If a vacancy occurs before election day and after the printing of the ballots, and any person is nominated according to the provisions of this title to fill such vacancy, the officer whose duty it is to have the ballots printed and distributed shall have printed on a requisite number of stickers the name of such substitute candidate and no other name. Such officer shall mail by registered or certified letter, or send such stickers by other reliable method, to the judges of election in the various precincts affected by such vacancy. The judges of election whose duty it is to distribute the ballots shall affix such stickers in the proper place on each ballot before it is given to the elector and shall cross out or otherwise obliterate the name of the original nominee causing such vacancy.

16-08-04. PERSONS NOMINATED - PARTISAN NOMINATIONS PROHIBITED. The number of persons to be nominated as candidates for any one office shall be that number of persons who receive the highest number of votes and who total twice the number of available positions for such office, if that many persons are candidates for nomination, provided, however, that no person shall be deemed nominated as a candidate for any office at any primary election unless the number of votes received by him equals the number of signatures required to be obtained on a petition to have a candidates name for such office placed on the primary ballot. No partisan nominations shall be made for any of the offices mentioned in section 16-08-01.

16-08-05. NO-PARTY BALLOT AT GENERAL ELECTIONS - CONTENTS - DELIVERED TO ELECTOR - NUMBER OF VOTES REQUIRED. There shall be a separate no-party ballot at the general election upon which shall be placed the names of all candidates who have been nominated on the no-party primary ballot at the primary election. Such ballot shall be in the same form as the no-party primary ballot and shall be delivered to each elector by the proper election official. The candidate or candidates to the number to be elected for each office receiving the highest number of votes shall be duly elected to such office, provided, however, no person who was entitled to have his name appear on the primary election ballot, but whose name was not placed on the primary election ballot, shall be elected to a no-party office as a write-in candidate unless such person receives a number of votes equal to or more than the number of signatures which would have been required to have his name placed on the primary election ballot.

16-08-07. FILLING VACANCY EXISTING ON NO-PARTY BALLOT - PETITION REQUIRED - TIME OF FILING. Whenever a vacancy shall exist on a no-party ballot for a state office or for judge of a district court, such vacancy may be filled by filing with the secretary of state, at least thirty-five days prior to the general election and before four o'clock p.m. on the thirty-fifth day, a written petition as provided in section 16-04-02, stating that the petitioner desires to become a

candidate for election to the office for which a vacancy exists. If the petition is mailed it shall be in the physical possession of the secretary of state before four o'clock p.m. on the thirty-fifth day prior to the general election. The petition for the nomination of any person to fill such vacancy shall be signed by qualified electors equal in number to at least two percent of the total vote cast for governor at the most recent general election in the state or district at which the office of governor was voted upon.

Whenever a vacancy shall exist on a no-party ballot in a county or district within a county, such vacancy may be filled by filing with the county auditor at least thirty-five days prior to the general election and before four o'clock p.m. of the thirty-fifth day a written petition as provided in section 16-04-04, stating that the petitioner desires to become a candidate for election to the office for which a vacancy exists. If such petition is mailed it should be in the possession of the county auditor before four o'clock p.m. on the thirty-fifth day prior to the general election. The petition for the nomination of any person to fill such vacancy shall be signed by qualified electors equal in number to at least thirty percent of the total vote cast for governor at the most recent general election in the county or district at which the office of governor was voted upon.

A vacancy in the no-party ballot shall be deemed to exist when a candidate nominated at the primary election shall die, resign, or otherwise become disqualified to have his name printed on the ballot at the general election. (Emphasis added)

16-12-06. VOTER MAY WRITE OR PASTE NAME ON BALLOT - COUNTING. The provisions of this title shall not prevent any voter from writing or pasting on his ballot the name of any person for whom he desires to vote, and such vote shall be counted the same as if printed on the ballot and marked by the voter.

16-20-17.1. POLITICAL ADVERTISEMENTS TO DISCLOSE NAME AND ADDRESS OF SPONSOR. Each and every political advertisement, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure or constitutional amendment, and whether such advertisement shall be by newspaper, pamphlet or folder, display cards, signs, posters or billboard advertisements, or by any other public means, shall disclose at the bottom of same the name or names and address or addresses of the sponsors of such advertisement, and the name or names and address or addresses of the person, persons, associations, or partnerships promoting or paying for such advertisement, except however, this section shall not apply to campaign buttons. At the close of every radio or television broadcast containing any advertising announcements or talk for or against any candidate for public office, any initiated measure, referred measure, or constitutional amendment to be voted on by the people, there shall be announced at the close of said broadcast the name or names of the person, persons, associations, or partnerships promoting or

paying for such radio or television broadcast.

16-20-19. ELECTIONEERING ON ELECTION DAY - PENALTY. Any person asking, soliciting, or in any manner trying to induce or persuade, any voter on an election day to vote or refrain from voting for any candidate or the candidates or ticket of any political party or organization, or any measure submitted to the people, shall be guilty of an infraction. The display upon motor vehicles of adhesive signs which are not readily removable and which promote the candidacy of any individual, any political party, or a vote upon any measure, and political advertisements promoting the candidacy of any individual, political party, or a vote upon any measure, which are displayed on fixed permanent billboards, shall not, however, be deemed a violation of this section.

In answer to your first question, this office has previously ruled that stickers may not be placed at or about the polls on election day where such stickers are used by a candidate who is not filling a vacancy for a no-party office pursuant to statute. This opinion was issued June 15, 1948; we see no reason to alter our position. The process for filling a vacancy on the ballot for a no-party office is set forth in Section 16-08-07, N.D.C.C. According to Section 16-08-07, N.D.C.C., a vacancy for a no-party office is "deemed to exist when a candidate nominated at the primary election shall die, resign, or otherwise become disqualified to have his name printed on the ballot at the general election." Section 16-05-08, N.D.C.C., provides that stickers are to be used when a vacancy occurs after the ballots have already been printed.

The facts presented in your letter are not contemplated in the above statutes or in any other statutes. Consequently, it is the opinion of this office that stickers cannot be placed at or about the polls on election day by a no-party candidate who was not nominated at a primary election (see, Sections 16-08-04 and 16-08-05, N.D.C.C., above) and who is not filling a vacancy on the ballot (see, Section 16-08-07, N.D.C.C.). It is further the opinion of this office that the distribution of such stickers on election day would be a violation of Section 16-20-19, N.D.C.C., which prohibits "asking, soliciting, or in any manner trying to induce or persuade, any voter on an election day to vote or refrain from voting for any candidate. . ."

In light of our answer to your first question it is not necessary to address your second question. When, however, stickers may be legally distributed at the polls, the procedure for same is clearly set forth in Section 16-05-08, N.D.C.C.

Before responding directly to your third question, the question of whether stickers may be used at all given the fact situation you describe should be briefly addressed. In this instance the candidate who is ineligible to have her name printed on the general election ballot intends to conduct a write-in campaign for Register of Deeds. In light of statutory provisions and case law it is clear that a person who is defeated in the primary may nonetheless run in the general election. See generally, Section 16-06-06, N.D.C.C., concerning defeated candidates on the party primary ballot; State ex

rel. Sundfor v. Thorson, 6 N.W.2d. 89; State ex rel. Graham v. hall, 15 N.W.2d. 736. While the use of stickers is neither specifically authorized nor prohibited in such situations, it is the opinion of this office that in accordance with Section 16-12-06, N.D.C.C., the use of stickers is a permissible aid that a write-in candidate may use to facilitate his or her election efforts. It is further the opinion of this office that such stickers may contain only the name of the candidate. Such stickers should not contain the office to which the candidate aspires, slogans, insignias, artwork, or other information.

In answer to your fourth question, it is our opinion that the distribution of stickers in this particular fact situation does constitute a political advertisement and must disclose the name(s) and address(es) of the sponsor(s) in accordance with Section 16-20-17.1, N.D.C.C. Such disclosure need not be on the sticker itself but should be printed on whatever the sticker is attached to for purposes of distribution or should be printed on a separate flyer, pamphlet, or paper which shall be distributed with the stickers.

I hope this sufficiently answers your inquiry.

Sincerely,

ALLEN I. OLSON

Attorney General