

**OPINION  
78-73**

September 14, 1978 (OPINION)

The Honorable Dan Rylance  
State Representative, 43rd District  
924 Sunset Drive  
Grand Forks, ND 58201

Dear Representative Rylance:

This office is in receipt of your letter of September 6, 1978, wherein you state:

"Enclosed is a sample machine primary ballot published in the Grand Forks Herald on August 31, 1978. An identical sample machine primary ballot was published in the same newspaper on August 24, 1978.

I would like to request a formal opinion from your office as to whether the above sample machine primary ballot constitutes compliance with Section 16-04-13, subsection 1, of the North Dakota Century Code and in particular the following "the county auditor shall publish the sample ballot form appropriate for the method of voting his his county. If both paper ballots and voting machines are used, both forms of the sample ballot must be published to meet publication and notice requirements. Absentee voter ballots shall not be considered in determining which form of voting is used. Candidates from each legislative district which falls within the boundaries of the county shall be listed in a separate box or category by legislative district number so as to enable the voters in each legislative district to ascertain the legislative candidates in their specific district.

Although a sample machine primary ballot was published in the Grand Forks Herald on August 24 and August 31, 1978, the ballot contained only a listing of legislative candidates from the 18th district on the sample machine primary ballot.

No listing of legislative candidates from the 17th, 42 and 43 districts of Grand Forks were printed on any sample machine primary ballots. Since all voters of the 17th, 42 and 43 districts will vote on a machine ballot, (except absentee ballots), I find that voters of the 17, 42 and 43 districts were not properly informed of their legislative candidates in the primary election of September, 1978 and that this omission constitutes a failure of the Grand Forks County Auditor and/or the official county newspaper, the Grand Forks Herald to comply with Section 16-04-13 of the North Dakota Century Code."

Subsection 1 of Section 16-04-03 of the 1977 Supplement to the North Dakota Century Code provides as follows:

"16-04-13. COUNTY AUDITOR TO PUBLISH SAMPLE PRIMARY ELECTION BALLOT AND NOTICE OF TIME AND PLACE OF ELECTION. The county

auditor shall publish in the official county newspaper and if no newspaper is published in the county then in a newspaper published in an adjoining county in the state:

1. A copy of the sample ballot of the primary election, as arranged by order and direction of the county auditor. The form of the sample ballots shall conform in all respects to the form prescribed by the legal publications handbook under subsection 5 of section 46-01-02 for the sample primary ballot. The county auditor shall publish the sample ballot form appropriate for the method of voting in his county. If both paper ballots and voting machines are used, both forms of the sample ballot must be published to meet publication and notice requirements. Absentee voter ballots shall not be considered in determining which form of voting is used. Candidates from each legislative district which falls within the boundaries of the county shall be listed in a separate box or category by legislative district number so as to enable the voters in each legislative district to ascertain the legislative candidates in their specific district."

We would note initially that the question of whether or not the published sample ballots you enclosed with your letter comply with the requirements of the legal publications handbook should be answered by the Department of Accounts and Purchases.

Where both printed ballots and voting machines are used, both a complete sample paper ballot and a complete sample machine ballot must be published. Section 16-04-13 requires that the appropriate sample ballot form published by the county auditor in the official county newspaper list the candidates from each legislative district within the county in a separate box or category by legislative district number. The sample voting machine ballot published August 31, 1978, and enclosed with your letter indicates that only the candidates from one legislative.

the names of all legislative candidates and their respective legislative district numbers existing in whole or in part with Grand Forks County. We have no information as to other supplementary publications that may have been published on August 31, 1978, or on other dates. Therefore, our opinion is limited to the sufficiency of the publication provided with your inquiry.

As a final comment, generally speaking it is the duty of the county auditor to prepare the sample ballot for publication and the duty of the official newspaper to publish what is provided.

It is hoped that the foregoing will be of assistance.

Sincerely,

ALLEN I. OLSON

Attorney General