

OPINION
78-78

August 31, 1978 (OPINION)

Mr. John Romanick
State's Attorney
McLean County
Washburn, ND 58577

Dear Mr. Romanick:

This is in response to your letter of August 25, 1978, wherein you inquire:

". . .whether the name of a candidate whose name appears on the no party primary ballot pursuant to the filing of a nomination petition can be stricken from a printed ballot upon the candidate filing a written request with the County Auditor that his name be withdrawn from consideration of the office."

The procedure for withdrawing from an election is set forth in N.D.C.C. Section 16-05-05 which provides as follows:

"16-05-05. In case nominee declines, certificate void. Whenever any person nominated for public office under the provisions of this title shall, at least thirty-five days before the election, in writing notify the officer with whom the certificate nominating him is filed that he declines such nomination, such nomination shall be void."

An individual cannot withdraw his name from the primary ballot or the general election ballot unless the deadline set forth in Section 16-05-05 is met.

A person desiring to withdraw from a primary election nomination may do so by complying with the provisions of Section 16-06-06. You should note, however, the North Dakota Supreme Court decision in *In re Murray*, 145 N.W.2d. 899. This case held in substance that a candidate who receives the third highest number of votes in a no-party primary election would not be entitled to the nomination even if the nomination of the winning candidates were set aside for any legal reason. Thus, if the person desiring now to withdraw is a winner in the primary election and subsequently withdraws the candidate finishing third does not gain a place on the ballot. Vacancies on a ballot may only be filled pursuant to N.D.C.C. Section 16-08-07.

It is hoped that the foregoing has been of assistance.

Sincerely,

ALLEN I. OLSON

Attorney General