

**OPINION
79-131**

December 19, 1979 (OPINION)

Honorable Kenneth N. Thompson

State Representative

287 Central Avenue North

Beach, North Dakota 58621

Dear Representative Thompson:

This is in response to your letter in regard to Chapter 274 of the 1979 Laws of North Dakota which has been codified as chapter 16.1-03 of the North Dakota Century Code dealing with Party Committee Organization.

You state that you would appreciate an opinion as to when the various sections of this chapter first go into effect. You mention, for example, that the bill became law on July 1, 1979, but with May fifteenth already past, you assume that sections 16.1-03-01 and 16.1-03-07 would not apply until 1981, however, section 16.1-03-12 would seem to apply in 1980.

You state that your main concern is the legitimacy in 1980 of precinct committeemen selected under previous law (repealed sections 16-17-01 or 16-17-08). You also suggest that sections 16.1-03-01 and 16.1-03-07 are not in effect until 1981, and ask whether current precinct committeemen can legally hold office beyond next year's Primary Election and until a date between the General Election and May 15, 1981. You state that this may be dealing in trivia, but possibly some District Committee's actions could be challenged if some of its members' (precinct committeemen) credentials are suspect.

Pursuant to Section 67 of the North Dakota Constitution, Chapter 274 of the 1979 Session Laws went into effect July 1, 1979. There is no provision in Chapter 274 of the 1979 Session Laws changing the effective or applicable date of any part thereof from the July first date.

We recognize the problem you envision herein by reason of the fact that said chapter enacted its provisions as if it were an entirely new law, simply repealing the old law rather than amending and reenacting the specific sections of the old statute.

We believe the usual rule of statutory construction in this type of situation may be of help to you in this regard. It is stated in 73 Am. Jur.2d. 509, Statutes, Section 391, in the following terms:

Section 391. SIMULTANEOUS REPEAL AND RE-ENACTMENT. Where a statute is repealed by a new statute which relates to the same subject matter, and which reenacts substantially the provisions of the earlier statute, and the repeal and reenactment occur simultaneously, the provisions of the original statute which

are reenacted in the new statute are not interrupted in their operation by the so-called repeal; they are regarded as having been continuously in force from the date they were originally enacted. Thus, it is said that the simultaneous repeal and reenactment of substantially the same statutory provision is to be construed, not as a true repeal, but as an affirmation and continuation of the original provision. All rights and interests arising under the original statute are therefore preserved, by the same token, liabilities which have arisen under a statute are not affected by its repeal and reenactment. Where a statute has been repealed and substantially reenacted by a statute which contains additions to or changes in the original statute, it follows that while the reenacted provisions are deemed to have been in operation continuously from the original enactment, the additions or changes are treated as amendments effective from the time the new statute goes into effect.

In many jurisdictions a statute or the constitution contains express provisions concerning the effect of a simultaneous repeal and reenactment of a statute, and these provisions usually adopt the common-law rule.

While not directly relevant to your question, we feel sections 1-02-21 and 1-02-22 of the North Dakota Century Code give an excellent example of the application of this general principle in this state by legislative fiat. These sections provide:

1-02-21. OFFICE HELD UNDER PROVISIONS REPEALED BY THIS CODE TO BE RETAINED - EXCEPTIONS. - Unless a different intention plainly appears, a public officer who is in office when this code takes effect shall remain in office until the expiration of the term for which he was elected or appointed unless he is removed prior to the expiration of the term as provided by law.

1-02-22. EFFECT WHEN OFFICE ABOLISHED. - When any office is abolished by the repeal of any legislative act or provision, and such act or provision is not in substance reenacted or continued in the code, such office ceases at the time the code takes effect.

Recognizing this principle of statutory construction and looking to your assumptions, we would conclude that Chapter 274 of the 1979 Session Laws did not take effect prior to July 1, 1979, on which basis same would not authorize nor require a party caucus as of May 15, 1979, and the repeal provisions of same would not invalidate actions taken pursuant to law under the prior statute. As of "on or before" May fifteenth following the next presidential election, the provisions of section 16.1-03-02 (1979 Interim Supplement of Replacement Volume 3) would apply in the absence of legislative changes in the interim. We would likewise conclude that the district committees will meet within fifteen days after the precinct caucus provided for in section 16.1-03-01 also in 1981 in the absence of legislative change in the interim. Pursuant to section 16.1-03-12, the district committees (including precinct committeemen selected prior to July 1, 1979) would meet prior to the second Monday in June of the presidential election year which, in the absence of other

legislative action, would be before action pursuant to the new sections 16.1-03-01 and 16.1-03-07. Also, precinct committeemen, selected prior to July 1, 1979, within limitations expressed in said section 16.1-03-12, could call precinct caucuses to select additional delegates prior to such district committee meetings.

Referring to what you express as your main concern, precinct committeemen selected under the prior statute (sections 16-17-01 and 16-17-08) will continue in office for the term specified in the prior law and until replaced pursuant to the provisions of Chapter 274 of the 1979 Session Laws.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely,

ALLEN I. OLSON

Attorney General