

Office of the Attorney General
State of North Dakota

Opinion No. 81-88

Date Issued: August 17, 1981

Requested by: Senator Wayne Stenehjem

--QUESTION PRESENTED--

Whether Section 16-11-06 of the North Dakota Century Code, as amended by the 1981 Legislative Assembly, requires that all general election ballot columns, including the individual nominations column, be rotated.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that Section 16-11-06, N.D.C.C., as amended by the 1981 Legislative Assembly, requires that columns on general election ballots be rotated.

--ANALYSIS--

Section 16-11-06, N.D.C.C., as amended by the 1981 Legislative Assembly, provides in part as follows:

'16-11-06. ARRANGEMENT OF NAMES ON BALLOT--PRESIDENTIAL ELECTORS. The ballot provided for in Section 16-11-05 shall be arranged as follows:

1. Initially, the names of the candidates of the party casting the highest number of votes in the state for members of Congress at the last preceding general election shall be arranged in the first or lefthand column of such ballot; of the party casting the next highest number of votes in the second column; of the party casting the next highest number of votes in the third column; and of such other party as the secretary of state may direct in the fourth and successive columns.
2. In printing each set of official ballots for various election precincts, all columns in subsection 1 shall be rotated so that an equal number of ballots shall be printed with each in the first or lefthand position.'

Pursuant to Section 16-11-05(4), N.D.C.C., the names of all persons nominated by petition rather than political party endorsement are 'placed in one column under the

designation of 'independent nominations' in the lines respectively specifying the offices for which they are nominated.' The placement of that column on the ballot is not prescribed by Section 16-11-05, N.D.C.C., or any other provision of law, although the independent nominations column has traditionally been placed after the party columns on the ballot. A nomination by petition has the same right to appear on the ballot as a nomination by endorsement.

The question of rotation on the North Dakota general election ballot prior to the 1981 amendment was addressed by the Eighth Circuit of the United States Court of Appeals in *McLain v. Meier*, 637 F.2d 1159 (8th Cir. 1980). There the Court stated:

'(The) fairest remedy for a constitutionally defective placement of candidates would appear to be some form of ballot rotation whereby 'first position' votes are shared equitably by all candidates. * * * However, due to cost and efficiency factors and voting machine design, this system has proved difficult to implement. (citations omitted) In any case, we do not now undertake on this record to determine which rotation arrangement is financially and administratively feasible, although we feel obliged to stress the constitutional requirement that position advantage must be eliminated as much as possible.' 637 F.2d 1159, 1169.

Accordingly, based on this court decision and the 1981 amendment in question, the only conclusion I can reach is that all candidates for office must have an equal exposure in the first column placement on the ballot. The Secretary of State has the authority to order the manner in which this is to take place through rotation.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts, or the applicable provisions of law are amended or repealed.

Robert O. Wefald
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Office of the Attorney General
State of North Dakota

Opinion No. 81-88 (Revised)

Date issued: August 17, 1981

Requested by: Wayne Stenehjem

Whether Section 16.1-06-07.1 of the North Dakota Century Code, as amended by the 1981 Legislative Assembly, requires that all general election ballot columns, including the individual nominations column, be rotated.

It is my opinion that Section 16.1-16-07.1, N.D.C.C., as amended by the 1981 Legislative Assembly, requires that columns on general election ballots be rotated.

Section 16.1-06-07.1, N.D.C.C., as amended by the 1981 Legislative Assembly, provides in part as follows:

'16.1-06-07.1. ARRANGEMENT OF NAMES ON BALLOT--PRESIDENTIAL ELECTORS. The ballot provided for in Section 16.1-06-05 shall be arranged as follows:

1. Initially, the names of the candidates of the party casting the highest number of votes in the state for members of Congress at the last preceding general election shall be arranged in the first or lefthand column of such ballot; of the party casting the next highest number of votes in the second column; of the party casting the next highest number of votes in the third column; and of such other party as the secretary of state may direct in the fourth and successive columns.
2. In printing each set of official ballots for various election precincts, all columns in subsection 1 shall be rotated so that an equal number of ballots shall be printed with each in the first or lefthand position.'

Pursuant to Section 16.1-06-05(4), N.D.C.C., the names of all persons nominated by petition rather than political party endorsement are 'placed in one column under the designation of 'independent nominations' in the lines respectively specifying the offices for which they are nominated.' The placement of that column on the ballot is not prescribed by Section 16.1-06-05, N.D.C.C., or any other provision of law, although the independent nominations column has traditionally been placed after the party columns on the ballot. A nomination by petition has the same right to appear on the ballot as a nomination by endorsement.

The question of rotation on the North Dakota general election ballot prior to the 1981 amendment was addressed by the Eighth Circuit of the United States Court of Appeals in *McLain v. Meier*, 637 F.2d 1159 (8th Cir. 1980). There the Court stated:

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Accordingly, based on this court decision and the 1981 amendment in question, the only conclusion I can reach is that all candidates for office must have an equal exposure in the first column placement on the ballot. The Secretary of State has the authority to order the manner in which this is to take place through rotation.

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