

Date Issued: March 18, 1982 (AGO 82-18)

Requested by: Senator Harvey D. Tallackson

- QUESTION PRESENTED -

Whether a state political party's resolution of support for a candidate for a nonpartisan state office violates North Dakota law.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a state political party's resolution of support for a candidate for a nonpartisan state office does not violate North Dakota law.

- ANALYSIS -

Section 16.1-11-08 of the North Dakota Century Code declares certain county and state offices to be nonpartisan. Candidates are prohibited from mentioning their party affiliation in their petitions for their candidacy. That statute states as follows:

16.1-11-08. REFERENCE TO PARTY AFFILIATION IN PETITION AND AFFIDAVIT PROHIBITED FOR CERTAIN OFFICES. No reference shall be made to a party ballot or to the party affiliation of a candidate in a petition and affidavit filed by or on behalf of a candidate for nomination in the primary election to an elective county office, the office of judge of the supreme court, judge of the district court, commissioner of labor, superintendent of public instruction, or tax commissioner.

According to section 16.1-11-37, N.D.C.C., "No partisan nominations shall be made for any of the offices mentioned in section 16.1-11-08."

Political parties are authorized to issue certificates of endorsement under section 16.1-11-06(1), N.D.C.C., which enable the names of their party's nominated candidates to appear on the ballot at the primary election. However, those candidates for county and state offices mentioned in section 16.1-11-08, N.D.C.C., may not participate in the "partisan nomination" process. Their names are placed on the primary election ballot through a petition pursuant to section 16.1-11-06(2), N.D.C.C.

Although sections 16.1-11-08 and 16.1-11-37, N.D.C.C., prohibit "partisan nominations" and a mention of a "party affiliation" on a candidate's petition and affidavit for nonpartisan offices, there is no prohibition against a resolution of support made by a political party in favor of a candidate for a nonpartisan office.

In Moon v. Halverson, 288 N.W. 579 (Minn. 1939), the Minnesota Supreme Court considered a Minnesota law which was fairly similar to our existing North Dakota law dealing with the partisan nomination process and nonpartisan candidates. The Minnesota law prohibited candidates who were filing for nomination for nonpartisan offices from

stating their political party affiliation in their affidavits or petitions. According to the Minnesota Supreme Court:

We find nothing in the statute which prohibits . . . a candidate for a nonpartisan office obtaining a party endorsement or supporting other candidates of a particular party. In our democratic system of government, absent constitutional statutory provisions to the contrary, there is nothing wrong in groups or political parties doing their utmost within the scope of propriety to advance the candidacy of an individual satisfactory to them. That candidate for the nonpartisan office is not thereby rendered a party candidate. Rather he is an individual supported by a party and free to encourage support from other sources, political and nonpolitical. 288 N.W. 579, 581. (Emphasis contained in published opinion.)

To interpret sections 16.1-11-08 and 16.1-11-37, N.D.C.C., to prohibit any expression by a political party as to candidates who have announced for nonpartisan offices would be a serious attack upon the constitutional rights of free speech and freedom of association of those persons who make up the political parties of our state. In Kusper v. Pontikes, 414 U.S. 51 (1973), the United States Supreme Court made it clear that unduly restrictive state election laws may so impinge upon the freedom of association as to run afoul of the First and Fourteenth Amendments.

There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of "orderly group activity" protected by the First and Fourteenth Amendments. Citations omitted. The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom. 414 U.S. 51 at 56, 57.

So long as the name of a candidate for a no-party office is placed on the primary ballot by a petition pursuant to section 16.1-11-06(2), N.D.C.C., and not by a certificate of endorsement, then the law has not been broken. The rights of free speech and freedom of association allow any political party to support any candidate for public office. Our law can only regulate how a candidate's name can be placed on the election ballot. A resolution of support by a political party is neither a partisan endorsement nor a political nomination as part of the election process contained in chapter 16.1-11, N.D.C.C.

- 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.

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