

Date Issued: June 15, 1982 (AGO 82-45)

Requested by: Ben Meier, Secretary of State

- QUESTION PRESENTED -

Whether the chairman of a board of county commissioners who is disqualified from acting as a member of the canvassing board may appoint as his alternate a disinterested elector of the county.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the chairman of a board of county commissioners who is disqualified from acting as a member of the canvassing board may appoint as his alternate a disinterested elector of the county.

- ANALYSIS -

Section 16.1-15-15 of the North Dakota Century Code states that the county canvassing board shall be composed of the clerk of the district court, county auditor, chairman of the board of county commissioners, and a representative of the district committee of all legislative districts falling within the boundaries of a county. Section 16.1-15-16, N.D.C.C., provides the qualifications of members of the canvassing board, including the method to be followed when a member is ineligible to serve. That section states as follows:

16.1-15-16. QUALIFICATIONS OF MEMBERS OF CANVASSING BOARDS - REPLACEMENTS - QUORUM. No member of the county canvassing board who would not be eligible to serve as a member of the election board pursuant to subsection 2 of section 16.1-05-02 shall serve on the county canvassing board. If any of the members of the board other than the representatives of the two political parties are disqualified or cannot serve for any other reason, the county commissioners who would be qualified to serve on the board shall appoint alternates to serve in the place of those members of the board who are disqualified. If any of the representatives of the district committees of the two parties are disqualified or cannot serve for any other reason, the district chairmen shall appoint an alternate from their respective district committees to act as a member of the county canvassing board. A majority of the members of the board or their duly appointed alternates shall constitute a quorum and may make the canvass provided for in this chapter and certify the results thereof.

This statute incorporates section 16.1-05-02(2), N.D.C.C., in describing qualifications for members of the county canvassing board. This subsection, among other things, prohibits any person from serving on the election board where he is a candidate in that election. Section 16.1-15-16, N.D.C.C., outlines the procedure to be followed when a member of

the canvassing board is unable to sit because of his disqualification. Where the chairman of a board of county commissioners is disqualified, this statute requires the county commissioners who are qualified to serve on the board to appoint an alternate in the place of the disqualified chairman. However, the statute is silent as to the procedure to be followed when there are no county commissioners qualified to serve on the board. The issue then becomes one of attempting to replace a disqualified member of the canvassing board.

There are no other statutes in Title 16.1, N.D.C.C., nor is there any legislative history, which gives direction as to the procedure to be followed in appointing alternates to the canvassing board where there are no qualified county commissioners able to serve on the canvassing board as outlined in section 16.1-15-16, N.D.C.C. However, the law on this subject, as it existed prior to the 1981 Legislative Assembly, does answer the question.

In section 16-13-14, N.D.C.C., as it existed prior to July 1, 1981, the following language is found:

. . . If the chairman of the board of county commissioners is disqualified or cannot serve for any other reason, he shall appoint a county commissioner who is not a candidate for office to act in his capacity as a member of the county canvassing board or if all county commissioners are disqualified or cannot serve for any other reason he shall appoint as an alternate a disinterested elector of the county, . . .

In the absence of legislative history or any other statute in existing Title 16.1, N.D.C.C., it is my opinion that the law on this particular subject should be followed as it existed prior to July 1, 1981. Therefore, in those situations where the chairman of a board of county commissioners is disqualified and there are no county commissioners who are eligible to sit on the canvassing board (who could make an appointment of an alternate pursuant to section 16.1-15-16, N.D.C.C.), the chairman shall appoint as an alternate a disinterested elector of the county. The alternate elector appointed by the chairman must satisfy the qualifications listed in section 16.1-05-02(2), 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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