

Office of the Attorney General
State of North Dakota

Opinion No. 83-21

Date Issued: May 25, 1983

Requested by: Secretary of State Ben Meier

--QUESTION PRESENTED--

Whether a voter in need of assistance in voting may seek such assistance by any person of the voter's choice.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a voter in need of assistance in voting may seek such assistance by any person of the voter's choice as of January 1, 1984, so long as that person is not the voter's employer or agent of that employer or officer or agent of the voter's union.

--ANALYSIS--

Current North Dakota law does allow voters who require assistance in voting to receive such voting assistance. However, the individuals who may assist such voters are the election judges at that particular voting place. The statute in question is Section 16.1-13-27 of the North Dakota Century Code which states as follows:

16.1-13-27. DISABILITY OF ELECTOR. Any elector who declares to the judges of election that he or she cannot read the English language, or that because of blindness or other disability is unable to mark his or her ballot, upon request, shall receive the assistance of both election judges in the marking of his or her ballot. No one assisting any elector in marking a ballot under this chapter shall give information regarding the same. No elector, other than one who is unable to read the English language or one who because of disability is unable to mark a ballot, shall divulge to anyone within the polling place the name of any candidate for whom he or she intends to vote, nor ask, nor receive the assistance of any person within the polling place to mark his or her ballot.

The United States Congress enacted the Voting Rights Act of 1965 and amended that Act in 1970, 1975 and 1982. This congressional legislation is designed to implement the Fifteenth Amendment to the Constitution of the United States which states that the rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude. Section

2 of the Fifteenth Amendment provides that Congress has the power to enforce this Article by appropriate legislation.

The United States Supreme Court has upheld the Voting Rights Act as constitutional based upon Congress's broad power to enact appropriate legislation to enforce those rights, such as the right to vote, guaranteed under the Fourteenth and Fifteenth Amendments to the United States Constitution. *South Carolina v. Katzenbach*, 383 U.S. 301 (1966); *Oregon v. Mitchell*, 400 U.S. 112 (1970); *City of Rome v. United States*, 446 U.S. 156 (1980). As the Voting Rights Act is solidly based upon constitutional authority vested in the Congress of the United States, it has nationwide effect and overrules conflicting state statutes based upon the Supremacy Clause in the United States Constitution.

As part of the 1982 amendments to the Voting Rights Act, Congress enacted 42 U.S.C. § 1973aa-6. This statute governs the method by which voters may receive assistance in casting their ballots. This statute states as follows:

1973aa-6. VOTING ASSISTANCE FOR BLIND, DISABLED OR ILLITERATE PERSONS.

Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

Section 42 U.S.C. 1973aa-6 becomes effective January 1, 1984. As of that date, all state statutes in conflict with this congressional enactment will be unenforceable. Instead, the states are bound to follow the congressional enactment as to who may assist voters in need of voting assistance.

Section 16.1-13-27, N.D.C.C., will conflict with 42 U.S.C. § 1973aa-6 as of January 1, 1984. As of that date, it is my opinion that the federal amendment to the Voting Rights Act will supersede the state statute. As such, a voter who requires assistance in casting his ballot on or after January 1, 1984, may request such assistance from any person of his choice without regard for whether that particular person is an election judge so long as that person is not the voter's employer or agent of that employer or officer or agent of the voter's union.

--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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