

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 91-06

Date issued: April 5, 1991

Requested by: Michael E. Keller  
Walsh County State's Attorney

- QUESTION PRESENTED -

Whether the requirements of N. D. C. C. " 16.1-01-10 and 16.1-11-11 conflict with article III, section 10 of the North Dakota Constitution.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the requirements of N. D. C. C. " 16.1-01-10 and 16.1-11-11 do not conflict with the requirement in article III, section 10 of the North Dakota Constitution that a petition for recall must be filed with the officer with whom the nomination petition of that official is filed.

- ANALYSIS -

N. D. Const. art. III, ' 10 provides that elected officials of the state or county and legislators may be recalled by petition. The recall petition must be "filed with the official with whom a petition for nomination to the office in question is filed who shall call a special election if he finds the petition valid and sufficient." N. D. Const. art. III, ' 10. N. D. C. C. ' 16.1-11-11 provides that nomination petitions for county or district office must be filed with the county auditor. Various state officials must file their nomination petitions with the Secretary of State. N. D. C. C. ' 16.1-11-06. N. D. C. C. ' 16.1-01-10 provides that the Secretary of State is to "pass upon the sufficiency of any petition mentioned in section 16.1-01-09." In addition to initiative and referendum petitions, N. D. C. C. ' 16.1-01-09 "mentions" recall petitions.

The issue presented is whether the petition for recall of a county official, including a sheriff, must be filed with the Secretary of State when the petition for nomination of these officials is to be filed with the county auditor. If so, N. D. C. C. " 16.1-01-10 and 16.1-11-11 conflict with the requirements established by N. D. Const. art. III, ' 10.

In interpreting a statute, it is presumed that the legislature intended to comply with the state constitution when the statute was enacted. N. D. C. C. ' 1-02-38(1). Additionally, statutes which are passed during the same legislative session must be construed together if possible. Kershaw v. Burleigh County, 47 N. W. 2d 132 (1951).

The two questionably conflicting statutes, sections 16.1-01-10 and 16.1-11-11, were enacted as a part of the same bill. 1981 N. D. Sess. Laws. ch. 241. Since 1981, N. D. C. C. ' 16.1-11-11 has been amended but those amendments do not relate to this issue. 1983 N. D. Sess. Laws. ch. 247, ' 1; 1987 N. D. Sess. Laws. ch. 242 ' 9.

The North Dakota Constitution provides that the official with whom the petition of nomination for an office is filed must review the recall petition.

N. D. Const. art. III, ' 10.

N. D. C. C. ' 16.1-01-10 provides that the "secretary of state shall have a reasonable period, not to exceed thirty-five days, in which to pass upon the sufficiency" of recall, initiative or referendum petitions. This language could be read to have two meanings. However, if possible, N. D. C. C. " 16.1-01-10 and 16.1-11-11 must be construed to be consistent with each other and in compliance with the constitution. Kershaw, 47 N. W. 2d 132; N. D. C. C. ' 1-02-38(1).

One of the meanings which can be given to N. D. C. C. ' 16.1-01-10 is that the Secretary of State must review all recall petitions. This interpretation must be rejected because it results in a conflict with article III, section 10 and N. D. C. C. ' 16.1-11-11.

The other interpretation is that N. D. C. C. ' 16.1-01-10 sets a time limit for the Secretary of State to review and pass upon the sufficiency of recall petitions of officials required to file their nomination petitions with the Secretary of State. This interpretation resolves the apparent conflict created by N. D. C. C. " 16.1-01-10 and 16.1-11-11. It is also consistent with the language of article III, section 10, requiring review of recall petitions by the official with whom the nomination petition is filed. It is therefore my opinion that N. D. C. C. " 16.1-01-10 and 16.1-11-11 do not conflict with article III, section 10.

- EFFECT -

This opinion is issued pursuant to N. D. C. C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Nicholas J. Spaeth  
Attorney General

Assisted by: Rosellen M Sand  
Assistant Attorney General

jfl