

LETTER OPINION
93-L-230

August 13, 1993

Honorable Francis J. Wald
State Representative
P.O. Box 330
Dickinson, ND 58602-0330

Dear Representative Wald:

Thank you for your July 23, 1993, letter asking whether a school board can declare a school board election null and void and designate a date and time for another election.

School boards may exercise only those powers expressly granted to them or necessarily implied from the grant. Myhre v. School Bd. of North Central Public School Dist. No. 10, 122 N.W.2d 816 (N.D. 1963). The rule of strict construction applies in defining the powers of school boards and any doubt as to the existence or extent of such powers must be resolved against the school board. Id.

When acting as the canvassing board for a school district election, the school board's duties are purely ministerial. Stearns v. Twin Butte Public School District No. 1, 185 N.W.2d 641 (N.D. 1971). The canvassing board has no authority to pass upon the regularity of an election or the qualifications of a candidate. Id.; see also 26 Am. Jur.2d Elections ? 300 (1966).

Therefore, it is my opinion that a school board may not declare an election null and void and designate a date and time for another election.

As a point of information, I note the following discussion of the North Dakota Supreme Court regarding challenges to elections:

All provisions of the election law are mandatory, if enforcement is sought before election in a direct proceeding for that purpose; but after election all should be held directory only, in support of the result, unless of a character to effect an obstruction to the free and intelligent casting of the vote or to the ascertainment of the result, or unless the provisions affect an essential element of the election, or unless it is expressly declared by the statute that the particular act is essential to the validity of an election, or that its omission shall render it void.

Kiner v. Well, 71 N.W.2d 743, 750 (N.D. 1955) (quoting Jones v. State, 55 N.E. 229, 233 (Ind. 18599)). Neither N.D.C.C. ? 15-28-04 nor N.D.C.C. ? 15-28-09 expressly provides that its

provisions are essential to the validity of the election. Although the question of whether a defect in an election obstructs the free and intelligent casting of the vote is ultimately a question of fact, it does not appear to me that the particular defects you discuss did.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

tca/pg