

LETTER OPINION
94-L-101

April 12, 1994

Mr. Charles J. Peterson
Golden Valley County State's Attorney
P.O. Box 10
Beach, ND 58621-0010

Dear Mr. Peterson:

Thank you for your letter requesting an opinion on whether a person who is not a licensed attorney may have his name placed on an election ballot for county state's attorney. There is no specific statute which sets out the qualifications for a candidate for the position of state's attorney. N.D.C.C. ? 11-10-04, which sets out general qualifications for county officers, provides that a county officer must be a qualified elector in the county in which the person is chosen or appointed.

However, in Enge v. Cass, 148 N.W. 607 (N.D. 1914), the court determined that while there was no express provision in the state constitution or statutes requiring a candidate for state's attorney to be licensed to practice as an attorney, it was implied both in the constitution and statutes that the office required such a qualification. Id. at 608. The court noted that Section 173 of the Constitution [now Article VII, Section 8] listed the various elected county officers and included a "state's attorney." The court further noted that "[t]he expression 'state's attorney,' as thus used, clearly implies that such officer shall be an attorney and counselor at law, duly admitted in the courts of this state, and the statute defining the duties of such official clearly contemplates and implies that such officer shall be a duly licensed attorney and counselor at law." Id.

The present statutory listing of the state's attorney's duties as contained in N.D.C.C. ? 11-16-01 also clearly contemplates, as the court in Enge observed, that a state's attorney must be a licensed

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attorney to carry out the duties of the office. The statute lists such traditional functions and duties of a licensed attorney as appearing in court, giving legal advice, drawing up legal documents, defending lawsuits, etc.

In your letter you indicate that an individual who does not possess a law degree and is not a licensed attorney has submitted a petition with the requisite number of signatures to have his name placed on the ballot for state's attorney. It would not be possible for this individual to meet the implied requirement for the office of state's attorney either at the time of election or at the commencement of the term. See Enge v. Cass, 148 N.W. at 608-10; Nielsen v. Neuharth, 331 N.W.2d 58, 60 (N.D. 1983). In other words, this individual could not be qualified for the office before the time for taking office.

In Petition of Teigen, 221 N.W.2d 94, 99 (N.D. 1974), the court held that a candidate for the office of Supreme Court justice could not have his name placed on the ballot since he was not admitted to the bar or to the practice of law. Since the disqualification of not being a licensed attorney could not be corrected in the time necessary to permit the candidate to assume the office if elected, such an individual may not even have his name placed on the ballot. See Nielsen v. Neuharth, 331 N.W.2d at 60 n.1.

Consequently, it is my opinion that a candidate for state's attorney who does not possess a law degree and is not a licensed attorney may not have his name placed on the ballot for county state's attorney since the disqualification is of a type which could not be corrected in the time necessary to permit the candidate to assume the office if elected.

Sincerely,

Mr. Charles J. Peterson
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Heidi Heitkamp
ATTORNEY GENERAL

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