

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 95-F-12

Date issued: December 22, 1995
Requested by: Alvin A. Jaeger, Secretary of State

- QUESTION PRESENTED -

Whether the petition submission deadline of five p.m. contained in N.D.C.C. § 16.1-01-09(7) is invalid for initiative petitions submitted pursuant to Article III, Section 5 of the North Dakota Constitution and, if this statutory deadline is invalid, by when such petitions must be filed.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the five p.m. petition submission deadline contained in N.D.C.C. § 16.1-01-09(7) is invalid for initiative petitions submitted pursuant to Article III, Section 5 of the North Dakota Constitution and that proponents of an initiated petition would have until midnight on the deadline date for submitting such petitions to the Secretary of State.

- ANALYSIS -

Article III, Section 5 of the North Dakota Constitution provides, in part, as follows:

An initiative petition shall be submitted not less than ninety days before the statewide election at which the measure is to be voted upon. A referendum petition may be submitted only within ninety days after the filing of the measure with the secretary of state.

N.D.C.C. § 16.1-01-09(7) provides that "[a] petition must be submitted to the secretary of state by five p.m. on the day designated as the deadline for submitting the petition." In Husebye v. Jaeger, 534 N.W.2d 811 (N.D. 1995), a case dealing with the validity of the statutory five p.m. deadline for submitting referendum petitions, the court determined that N.D.C.C. § 16.1-01-09(7) is unconstitutional. Id. at 816. The court held that "[a]rt. III, § 5, N.D. Const., allows submission of referral petitions until midnight of the 90th day." Id. at 814.

The court in Husebye was concerned with the submission deadline for referendum petitions. Article III, Section 5 of the North Dakota Constitution allows a referendum petition to be submitted only within 90 days after the filing of the measure with the Secretary of State. On the other hand, an initiative petition must be submitted not less than 90 days before the statewide election at which the measure is to be voted upon. N.D. Const.

art. III, § 5. While the submission deadlines in both instances concern 90-day time periods, the initiative petition is keyed off of the date of a statewide election whereas the referendum petition submission deadline commences after the filing of the measure with the Secretary of State.

Nevertheless, the court in Husebye indicated that in counting the 90 days for submitting petitions the days are to be full 24-hour periods running from midnight to midnight. 534 N.W.2d at 814. The court adopted the line of case law authority holding that because a day generally means a full 24-hour period running from midnight to midnight, a petition may be filed at any time until midnight of the last day. Id. The Husebye court further noted that a statute which shortens the constitutionally prescribed period for submission of petitions hampers, restricts, or impairs the powers reserved to the people and thus violates Article III, Section 1 of the North Dakota Constitution which provides that Article III is self-executing and that laws may be enacted to facilitate and safeguard but not hamper, restrict, or impair the powers. Id. at 816.

This reasoning applies with equal force to the petition submission deadline for initiative petitions. For the same reasons articulated by the court in Husebye, it is my opinion that if faced with the question presented here, the North Dakota Supreme Court would rule that the proponents of an initiated petition would have until midnight of the deadline date for submitting such petitions to the Secretary of State and that N.D.C.C. § 16.1-01-09(7) as applied to initiative petitions is also constitutionally invalid in that it hampers, restricts, or impairs the powers reserved to the people by Article III of the North Dakota Constitution.

- 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.

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