

LETTER OPINION
95-L-267

November 28, 1995

Honorable David O'Connell
State Senator
Route 1, Box 78
Lansford, ND 58750

Dear Senator O'Connell:

Thank you for your October 28, 1995, letter requesting my opinion on the responsibilities of the Secretary of State and the county auditors in the upcoming presidential preference contest. The 1995 Legislative Assembly passed House Bill No. 1432 dealing with presidential preference contests and scheduled the preference contests for the last Tuesday in February in a presidential election year. See 1995 N.D. Sess. Laws ch. 209, § 1; N.D.C.C. § 16.1-11-02.

You first asked whether county auditors are required to administer the presidential preference contest or whether the Secretary of State may hire an outside person to conduct the contest. Section 3 of House Bill 1432 provides: "[a]s applicable and except as otherwise provided in this chapter [N.D.C.C. ch. 16.1-11], the presidential preference contest must be governed by the requirements of this title [16.1] applicable to primary elections, including deadlines for ballot preparation and election official appointments." N.D.C.C. § 16.1-11-02.1.

N.D.C.C. § 16.1-11-40 provides, in part, that "the primary election must be provided for, conducted, and the expenses thereof paid as in the case of a general election." N.D.C.C. § 16.1-01-01 generally provides that the Secretary of State is the supervisor of elections and further provides that the county auditor is the county administrator of elections and is responsible to the Secretary of State for the proper administration within the auditor's county of state laws, rules, and regulations concerning election procedures. Id. Section 8 of House Bill 1432 also provides that "[t]he votes cast in presidential preference contests must be counted and canvassed as other votes. . . ." Based on the foregoing, it is my opinion that county auditors are required to administer a presidential preference contest. Further, the Secretary of State has no authority to hire an outside person to conduct the contest.

You next asked whether counties must be reimbursed for direct and indirect costs incurred such as salaries of the county auditors and office employees for time spent on the contest. Section 3 of House

Honorable David O'Connell
November 28, 1995
Page 2

Bill 1432 provides that "[t]he cost of the contest must be paid in the same manner as provided for a statewide special election under section 16.1-01-02.3." N.D.C.C. § 16.1-01-02.3 provides as follows:

16.1-01-02.3. Special election costs - Reimbursement. The state shall reimburse each county for the costs incurred by the county for conducting a statewide special election that is not held on the date of a statewide primary or general election. Each county shall submit a detailed statement to the office of the budget which lists all expenses incurred by the county in conducting the special election within forty-five days after the special election. The office of the budget shall submit a request for an appropriation to reimburse the counties to the next regular or special session of the legislative assembly. The legislative assembly shall appropriate the funds necessary for the payment of the special election costs.

However, N.D.C.C. § 16.1-01-02.3 must be read in conjunction with Section 11 of House Bill 1432 which provides a specific appropriation for conducting the upcoming presidential preference contest in the amount of \$275,000.

While N.D.C.C. § 16.1-01-02.3 contemplates that each county submit a detailed statement of costs to the office of budget and that the office of budget thereafter submit a request for an appropriation to reimburse counties at the next legislative session, that step has been superseded for the upcoming presidential preference contest by Section 11 of House Bill 1432 in that the Legislative Assembly has already appropriated the sum of \$275,000 to the Secretary of State to conduct the upcoming presidential preference contest. While the general provision in N.D.C.C. § 16.1-01-02.3 provides that expenses of a county in conducting such an election are submitted to the office of budget and the Legislative Assembly is to appropriate necessary funds for payment of such election costs, the more specific appropriation provision contained in Section 11 of House Bill 1432, in my opinion, places a cap of \$275,000 on the payment of such expenses of the counties for the upcoming presidential preference contest. See N.D.C.C. § 1-02-07.

The Legislature granted the Secretary of State special rulemaking authority to streamline election procedures for the upcoming presidential preference contest by providing for a reduction of poll workers, poll hours, and precincts, and by authorizing the

Honorable David O'Connell
November 28, 1995
Page 3

presidential preference contest to be conducted by mail. See 1995 N.D. Sess. Laws ch. 209, §§ 3, 4, and 13.

As you have noted, the Secretary of State calculated a pro rata allocation of the \$275,000 to the various counties based on the average number of voters per county in the past four statewide elections and expressed as a percentage of all state voters. That proposed allocation, I am informed, was for discussion purposes only. Since that time, rules have been developed to lower the costs of the contest and the Secretary of State informs me he believes the cost of the contest may actually be met by the \$275,000 appropriation. The Secretary of State has not been budgeted any further funds to cover the costs of the upcoming presidential preference contest. Nor has the Secretary of State been granted any authority to expend any other funds for this purpose. Therefore, any costs exceeding the \$275,000 will need to be borne by the counties.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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