

**OPINION**  
**45-83**

October 31, 1945 (OPINION)

ELECTIONS

RE: Special - U.S. Senator

QUESTION NO. 1: "In the election to fill the Moses senatorial seat, will all the candidate appear in one column or will there be Republican, Democrat and Independent columns?"

While there is no specific law requiring the ballot in the special election to elect a successor to fill the vacancy in the office of United States Senator due to the death of the late Senator Moses, yet in reading all the statutes together, I am of the opinion that such ticket should be headed by party designations; that is, one column for the Republican Party; one for the Democrat Party; and one for individual candidates, particularly if a ballot in such a form is demanded by political organizations.

The Supreme Court of this state has held that political questions not specifically regulated by law, should be determined by the political bodies having such questions under consideration. It is not the intention or courts or legislatures to hamper or curtail the actions of political parties. They should be left free to perform their functions in all matters except where they are specifically regulated or limited by statute. This principle is clearly set forth in the opinion of our Supreme Court in the case of State ex rel McArthur v. McLean, 35 N.D. 216.

"Though our recent statutes have made material innovations in our election laws, and, in many respects, have put many matters which were purely political and which concerned the members of the respective parties merely, both under legislative control and the authority of the courts, we have no right to assume that it was the legislative intention that these purely political matters should be interfered with to a greater extent than was expressed by the statutes."

Evidently, the principle thus enunciated was in the minds of the members of the Legislature when they enacted chapter 135, Session Laws of 1935. Section 13 of said Act provides as follows:

"It is not the intention hereof to destroy or impair the organization of any party or principle now existing or hereafter to exist, therefore, each of such parties or principles, and each and all of the state, county, district and other committees thereof shall possess all of the power and authority heretofore established and existing by the usage and customs of such parties not inconsistent with any of the provisions hereof."

QUESTION NO. 2: "Will it be a matter of compulsion or discretion for the party state chairman to call the convention for purpose of designating party nominee?"

Answering Question NO. 2, section 16-0702 of the Revised Code of 1943 provides that, "If a special election is called to fill a vacancy in any office for which a party nomination may be made, the proper party committee shall call a convention to make a party nomination for such office. The precinct committeemen of the county or district shall be duly convened and shall elect the required number of delegates to such convention."

While the language of this statute appears to make it mandatory to call a convention, since the word "shall" is used, nevertheless, in view of what I have said in answer to Question No. 1, I believe it is discretionary with the party as to whether or not a convention should be called, but the party organization has the right to call a convention if desired.

QUESTION NO. 3: "Will the precinct committeemen be elected in 1946 for two years or four years?"

Section 1 of chapter 26 of the Special Session Laws of 1944 provides:

"That at the Party Primary Election now held on the last Tuesday in mencing with the year 1938, and each fourth year thereafter, there shall be elected as hereinafter provided by the qualified electors of each political party."

Under this section it is clear that precinct committeemen are elected every four years, first election being in the year 1938. The next election was in 1942, and there will, therefore, be an election of precinct committeemen in 1946. There is an apparent conflict since section 16-1701 provides that, "At the primary election held in each even numbered year, there shall be elected, in the manner provided in this chapter, by the qualified electors of each political party from each voting precinct, committeemen to represent such political party."

This section, being a part of the 1943 Code which was approved and passed in its entirety by the 1945 Legislature, might appear on the surface that it is in conflict with section 1 of chapter 26 of the Special Session Laws of 1944. However, that apparent confusion is removed by section 1-0233 of the Revised Code of 1943, which provides as follows:

"Any statute other than this code, whether enacted at the 1943 session of the legislative assembly or thereafter, shall be deemed to have been enacted subsequently to the enactment of this code. If any such statute repeals, amends, or is inconsistent with any provision of this code, the provisions of such statute shall prevail."

It follows, therefore, that since chapter 26 of the 1944 Special Session Laws was enacted after the 1943 Session, it takes precedence over any statute in the Revised Code of 1943 which may be in conflict therewith.

QUESTION NO. 4: "Is there a conflict in the law regarding the time for getting the petitions for precinct committeemen signed and

when they shall be filed?"

Section 3 of chapter 26 of the 1944 Special Session Laws as follows:

"Candidates for precinct committeemen may have their names placed on separate party ballots of their respective parties within their respective precincts by filing with the county auditor and more than ninety (90) nor less than seventy (70) days prior to the election petitions bearing the signatures of not less than five per cent of the last vote in such precinct for the aforesaid candidate for presidential elector of the party to which the candidate for precinct committeeman belongs. Such nominating petitions shall conform with the now existing requirements of law in all matters not specifically provided for herein. Each name on the petition shall be that of a qualified voter of the precinct of which the candidate seeks to be elected and be subscribed under a party heading. Each signer of a nomination paper shall be entitled to sign the same number of petitions as the number of precinct committeemen entitled to be elected in his precinct; he shall add his residence with the street number, if any, and the date of signing."

While perhaps this section is not as clear as it should be, nevertheless, I do not believe it is confusing and that the precinct committeemen will have any difficulty in preparing and filing their petitions.

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