

**OPINION
46-235**

February 25, 1946 (OPINION)

PRECINCT COMMITTEEMEN

RE: Vacancies

This office is in receipt of your letter of February 23 relative to vacancies in the office of precinct committeemen.

You first inquire whether the county executive committee may declare a vacancy and appoint a successor to a precinct committeeman who is absent from the state and serving in the armed forces of his country.

Section 16-1702 of the North Dakota Revised Code of 1943 provides that each political party in each voting precinct in this state shall be entitled to elect one precinct committeeman for each 250 votes or major fraction thereof cast in such precinct at the last preceding presidential election for the presidential electors of such party.

Section 1 of chapter 26 of the 1944 Special Session Laws provides that precinct committeemen shall be elected on the last Tuesday in June of each even numbered year commencing with the year 1938 and each fourth year thereafter; consequently, there will be election of precinct committeemen this year.

Each precinct is, of course, entitled to representation on the basis provided in section 16-1702, supra. If the regularly elected precinct committeeman is absent, he may give a proxy to an elector who is a resident of his precinct.

Section 16-1708 provides that a vacancy in the office of precinct committeemen shall be filled by appointment from such precinct by the county executive committee of such party.

Section 16 1713 provides that proxies are permissible at all meetings held pursuant to the provisions of chapter 16-17, but all proxies shall be from the precinct, district, or county which the person giving the proxy represents.

You inquire how much discretion a county executive committee may exercise in deciding whether or not a precinct committeeman is still a bona fide resident of his precinct and state.

The executive committee has not a great deal of discretion in such cases. Legal residence is largely a matter of intention, and unless a person has committed some overt act; for instance, voting in another state, or has committed some other act from which it clearly appears that he is no longer a resident of this state, the executive committee has no discretion. A person may be absent from the state for any length of time. If it is his intention to maintain his legal residence in this state, he may do so and also exercise his franchise here. Such person may under the law give a proxy to any person in this state who is a resident elector of the precinct of the person giving the proxy.

You inquire further whether or not you are correct in assuming that any action taken at a legal party convention is subject to judicial review.

That is, of course, a rather general question which cannot be answered specifically. In the case of *State ex rel McArthur v. McLean*, 35. N.D. 216, the Supreme Court of North Dakota said:

"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 that was expressed by the statutes."

It can be stated as a general principle that political parties are given considerable latitude in conducting the affairs in purely political matters and the courts will not interfere unless fundamental and substantial rights have been violated.

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