

OPINION
46-95

May 24, 1946 (OPINION)

ELECTIONS

RE: County Canvassing Board - Who May Act

This will acknowledge the receipt of your letter of May 21, 1946, in which you request the opinion of this office as to whether a county officer - the auditor, clerk of court, and chairman of the board of county commissioners, can legally act as members of the county canvassing board if and when they are candidates for reelection.

Section 16-1314 of the North Dakota Revised Code of 1943 is self-explanatory. It reads as follows:

"No member of the county canvassing board who shall be a candidate for office at an election shall serve on such board, unless there is not a sufficient number of such members who are not candidates. If the county auditor is a candidate for office, he shall take no part in the canvass but shall act as clerk of such board, and in such a case, the clerk of the district court and the chairman of the board of county commissioners shall call to their assistance a justice of the peace of the county. Any three members of the board shall constitute a quorum and may make the canvass provided for in this chapter and certify the results thereof."

If a county auditor is a candidate for office, he cannot serve as a member of the canvassing board, but he is required to act as clerk of the board. The chairman of the board of county commissioners and the clerk of court are then required to call to their assistance a justice of the peace of the county." If the clerk of court and the chairman of the board of county commissioners are candidates for office, the three remaining members, namely, the justice of the peace and "the chairman of each of the count committees of the two political parties which cast the highest number of votes for governor" will function as the county canvassing board. For the three will constitute a quorum.

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