

**OPINION**  
**48-42**

July 22, 1948           (OPINION)

ELECTIONS

RE: Construction of Statutes

Your letter of July 19, 1984, addressed to the attorney general, has been received and the contents duly noted.

You refer to changes in language made by the code commission in certain sections of the election laws, more particularly sections 16-0301 and 16-0302 of the 1943 Revised Code. These sections, as they now appear in the 1943 code, read as follows:

16-0301. INDIVIDUAL NOMINATIONS MAY BE MADE WHEN. Nominations of candidates to appear in the individual column at any general or special election to fill an office which appears on the consolidated primary election ballot may be made as provided by this chapter."

16-0302. CERTIFICATE OF NOMINATION BY PETITION; SIGNATURES REQUIRED; CONTENTS OF. A candidate for public office may be nominated by filing a certificate of nomination containing the name of the candidate for the office to be filled and such other information as is required in the certificate provided for in section 16-0705. Such certificate shall be signed by electors who reside within the state, and, if the office to be filled is that of a district or political subdivision, by electors who reside within the district or political subdivision in and for which the officer is to be elected in the following number:

1. When the nomination is for an office to be filled by the electors of the entire state, the number of signatures shall not be less than three hundred; and
2. When the nomination is for an office to be filled by the electors of a district less than the entire state, the number of signatures shall be ten percent of the number of votes cast in such district for member of congress at the last preceding general election except that in no case shall more than three hundred signatures be required.

Such signatures need not be appended to one paper. Each elector signing a certificate shall add to his name his post office address.

Such certificate may be filed as provided in section 16-0501."

The sections quoted appear as section 971a in the Revised Code of 1913. But the code commission has changed the language somewhat which may tend to make the intent of the statute ambiguous.

Section 971a of the 1913 code provides that: "Candidates for public

office may be nominated otherwise than in convention in the manner following: \* \* \*" Reference is then made to section 970 which appears in the 1943 code as section 16-0705, which specifies what the certificate of nomination shall contain.

Your specific question is, whether or not under the provisions of section 16-0301 a group of citizens, not sufficient in number to constitute a party, may have individual nominations of presidential electors in the individual column of the general election ballot. In other words, does section 16-0301 limit nominations in the individual column on the general election ballot to offices which appear on the primary election ballot?

Presidential electors do not appear on the primary election ballot, but are nominated by conventions of political parties, which parties must have cast a certain number of votes in the last general election.

It is true that section 16-0301 refers only to offices which appear on the primary election ballot, but I do not believe that the language of this section can be construed to hold that only candidates for offices appearing on the primary election ballot may file in the individual column of the general election ballot.

Section 971a of the 1913 code has been construed by our supreme court in the case of State v. Blaisdell, 20 N.D. 622, 127 N.W. 720. In the opinion of that case we find the following language which refers to section 971a:

Those who belong to no party or to parties not casting the percentage of votes necessary to bring them within the terms of the primary election law as parties, may proceed in another manner, as provided by statute, and their rights to become candidates, or to make nominations within their respective parties or political circles, are not infringed."

Further on, in the opinion, we find this language:

Section 501, Rev. Codes 1899, is still in force, and provides that candidates for public office may be nominated by means of a certificate of nomination containing the name of the candidate for the office to be filled, giving his post office address, the office for which he is named, and, in not more than five words, the party or principle which he represents, and must be signed by electors residing within the district or political division to a certain percent of the votes cast therein, not in any case requiring more than 300 signatures. Such name then appears upon the Australian ballot used at the general election in the individual column, followed by the designation of the party to which he belongs."

Section 16-0301 of the 1943 Revised Code refers to offices appearing on the primary election ballot, but it cannot by any legal logic be held that it excludes offices, such as that of presidential electors, which do not appear on the primary election ballot.

Section 898 of the 1913 code 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, and other committees thereof shall possess all of the ordinary powers and authority heretofore established by the usages and customs of such parties not inconsistent with any of the provisions hereof."

This section appears in the 1943 Revised Code as section 16-0109 in somewhat changed language, but with the same meaning. It reads as follows:

Each of the political parties and each and all of the state, county, and other committees thereof, shall possess the ordinary powers and authority established by the usages and customs of such parties not inconsistent with any of the provisions of this title."

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 intent of the 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 when 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, 356 N.D. 216, which reads as follows:

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."

As I have already pointed out, our supreme court has construed section 971a of the 1913 code, which has been rewritten by the code commission and now appears as sections 16-0301 and 16-0302 of the 1943 code. It is a general rule of statutory construction and interpretation that where a statute has once been construed by a court of last resort, such construction will apply to the statute although amended and changed in form, if the substance, purpose, and general intent thereof remain the same.

Section 16-0301 cannot be given a broader scope or intent than its language implies. It deals only with offices appearing on the primary election ballot. Presidential electors are nominated under statutes providing for an entirely different procedure. It would indeed be strained construction to hold that this section has any application to a statute which deals with an entirely different subject matter.

It is the opinion of this office, therefore, that section 16-0301 of

the 1943 Revised Code must be given the same construction as section 971a of the 1913 code.

The functions of the code commission were to revise, and when necessary, to clarify and harmonize the statutes where needed, and it follows also, as I have already pointed out, that where a statute has been construed by a court of last resort, such construction applies to the statute when amended, unless the amendment contradicts the purpose and intent of the original statute.

P.O. SATHRE

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