

OPINION
50-46

May 31, 1950 (OPINION)

ELECTIONS

RE: Death of Lemke, Congressman

Your letter of May 31 addressed to the Attorney General has been received and contents of same have been noted.

You state that the sudden death of Congressman William Lemke brings to the Secretary of State the special problem of notifying county auditors and to provide for likely rearrangement of the primary election ballot. You state further that the names of candidates for which nominating petitions have been filed were certified by your office to county auditors on May 29, 1950, in accordance with Section 16-0412, N.D.R.C. 1943. You have notified the printers and they are withholding printing the names of the candidates pending the decision whether or not the name of the late William Lemke should be removed from the ballot. Your specific question is whether under the circumstances affecting names of Republican candidates for Representatives in Congress should the Secretary of State require actual proof of the death of Congressman Lemke or is he authorized to accept the information broadcast over the air and appearing in newspapers as sufficient notice.

Since the Honorable William Lemke is dead it could serve no purpose to have his name printed on the ballot. The fact that he is dead will be very well known throughout the state at the time of the Primary Election and while there might be some votes cast for his name, in all probabilities the other candidates would have the larger number of votes. It would seem to this office that placing Mr. Lemke's name on the ballot would be merely an idle act which could serve no purpose.

Section 31-1105 dealing with maxims of jurisprudence and particularly subdivision 23 provides that: "The law neither does nor requires idle act;"

Section 31-1002 which enumerates facts subject to judicial notice provides that:

Every court of this state will take judicial notice: * * *

84. Of such matters of common knowledge and science as may be known to all men of ordinary understanding and intelligence;"

The fact of Mr. Lemke's death has been announced over the radio several times, it has appeared in the public press of the state and it certainly is clear that his passing is an actual fact of which any court or public officer may take judicial notice.

In view of the fact that the placing of his name on the ballot could serve no purpose whatsoever and would be merely an idle act, it is the opinion of this office, in view of the fact that the ballots are

not printed, that his name should not be printed on the ballots.

WALLACE E. WARNER

Attorney General