

OPINION
50-58

July 8, 1950 (OPINION)

ELECTIONS

RE: Candidate Nominated by More Than One Party

I am in receipt of your letter of July 6, 1950, in which you request the opinion of this office on a matter involving the election of a precinct committeeman in Noble township.

You say that one C. O. Swenson has received the highest number of votes for precinct committeeman in both the Democratic and Republican columns. You say that Mr. Swenson was not a candidate whose name appeared on the ballot and that his vote was a "write in" vote in both cases, and further that Mr. Swenson was a judge of the election at which he received his votes.

Your first question is whether Mr. Swenson could be elected in view of the fact that he was at the time an election judge.

Section 16-1001, N.D.R.C., 1943, Supplement 1949, provides that no one shall serve upon the board of elections who "(2). Is a candidate at an election." However, it is the opinion of this office that in view of the fact that Mr. Swenson's name did not appear on the ballot and that his vote was a "write in" vote this section has no application in this case, and that Mr. Swenson could be elected in spite of having served as a judge of the election.

Your next question is, "What are the results of being elected both as a Republican and a Democratic committeeman?"

We have been unable to find any statutory or case law covering the situation which you have outlined, but we believe that section 16 j0505, N.D.R.C., 1943, indicates the procedure to be followed. That section provides:

16-0506. CANDIDATE NOMINATED BY MORE THAN ONE PARTY; NAME PLACED IN WHAT COLUMN. When the same candidate has been nominated for the same office by more than one assembly, convention, or body of electors qualified to make nominations for public office, such candidate shall file with the proper officer designated in section 16-0501, on or before the last day fixed by law for the filing of certificates of nominations for such office, a statement in writing signed by himself and designating the column upon such ballot allotted to one of the parties, assemblies, conventions, or bodies of electors by whom said candidate has been nominated, in which such candidate desires his name to appear. Such candidate's name shall be printed upon such ballot in such column, but in no other. If such candidate shall refuse or neglect to specify in which column he wishes his name printed on the ballot, the said officer shall cause his name to be printed in the column of the party or political organization from which he first received

notice of such person's nomination.

It is, therefore, the opinion of this office that Mr. Swenson should file a statement designating the party which he elects to serve as precinct committeeman. In which case there will be a vacancy in the office of precinct committeeman in the party which Mr. Swenson does not elect to serve. This vacancy may then be filled according to section 16-1708, N.D.R.C., 1943.

ELMO T. CHRISTIANSON

Attorney General