

OPINION
52-35

July 16, 1952 (OPINION)

ELECTIONS

RE: Publications; Returns

Yours of the fourteenth instant asking our opinion as to whether section 16-1332 N.D.R.C. of 1943 requires the county auditor to publish the election returns of the recent primary election or not has come to my desk.

Section 16-0601 provides for the holding of an election on the first Tuesday after the first Monday of November of each even-numbered year "which shall be known as the general election." This provision was first codified as section 477, Revised Code 1895, and was enacted as section 1, House Bill No. 1, Special Session of 1892. Section 16-0401 provides for the holding of primary elections "on the last Tuesday in June of every year in which a general election occurs."

This provision was enacted as section 2 of chapter 109, Laws of 1905.

It is therefore clearly apparent that the term "general election" was defined long prior to the existence in this state of a primary election, and section 16-0401 clearly differentiates the "primary" from the "general" election.

Section 16-1332, which provides for the publication of election returns of "general elections," was first enacted as section 1, chapter 71, Laws of 1881. It is therefore clearly apparent that the publication required is that of the returns of the "general", and not those of the "primary" election. Section 16-1321 provides that the auditor "shall cause a copy of the findings of the canvassing board to be published." The canvassing board referred to is the board that canvasses the returns of the primary election.

Sections 16-1323 also clearly indicate a difference between the "general" election and the "primary" election.

We are therefore of the opinion that the publication required by section 16-1332 is that of the general fall election known as the "general" election, and not that of the primary election.

The Legislature has sometimes provided that certain questions may be submitted to the people at any general election. The context of such acts clearly indicates that the legislative intent was that the question could be submitted at any state-wide election, one which the total electorate could participate in, rather than in the fall election only.

This office has had occasion a number of times to construe such acts and, when the context showed the intent that the question might be submitted at any election which the entire electorate participated in, has held that the matter might be submitted at either the primary

or the general election. Section 4-0231 is such an act as above referred to.

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