

**OPINION
52-61**

April 23, 1952 (OPINION)

ELECTIONS

RE: School District

According to your letter of April 8, 1952, three new directors must be elected by reason of vacancy at the annual school district election so that one director must be elected for three years, one director for two years and one director for the period of one year.

You further state in your letter, "After some discussion and thinking on the above matter it is my belief that probably the simplest and easiest method of handling this election would be to provide blank ballots and allow the electors to write in the names of three persons, since there are three offices open. Upon counting the ballots of the three candidates receiving the largest total number of votes would be declared elected as follows: That candidate having the highest number of votes as the director for three years, the person having the second highest total number of votes be elected the director for two years, and the person having the third highest total number of votes be elected as director for a period of one year."

You therefore request an opinion as to the procedure that should be followed and whether or not your proposed method would be acceptable.

Chapter 15-24 of the N.D.R.C. of 1943, as amended, does not provided a formal method or procedure to be followed. It does, however, provide that directors shall be elected for three years or to fill unexpired terms. Your solution, while admittedly presenting a simple and easy method of handling the election, is objectionable in that it would deprive the voters of their right to designate their choice for officers for specific terms.

In the situation you have presented, one director must be elected for the full three year term while two others must be elected to fill unexpired terms. Each office must therefore be considered and voted on individually.

Section 15-2403 of the 1949 Supplement to the N.D.R.C. of 1943 provides in part, "At each annual election, directors shall be elected to fill vacancies caused by the expiration of terms of office or otherwise. Each director elected shall serve for a term of three years except when elected to serve an unexpired term."

It is, therefore, apparent that the voters must be given the right to designate and specify the director they desire for the three year term and also indicate their choice of an officer for each of the unexpired terms.

When two or more officers are to be elected for terms expiring at different times a ballot is void for uncertainty and cannot be counted if it fails to designate the office to which each candidate

seeks election. Thus, a ballot at an election to choose one officer for a full term of three years and one to fill a vacancy for one year could not be counted if it only contained the names of two persons without anything to designate which office either was intended for.

We would therefore suggest that the ballots be prepared in such a manner that voting may be for each specific office. It is also our opinion that the name of at least one candidate should appear on the ballot for each specific office and a place should also be left under each office so that a voter who may not be satisfied with the candidate whose name appears thereon for a designated office may write in the candidate of his choice.

ELMO T. CHRISTIANSON

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