

OPINION
56-103

October 17, 1956 (OPINION)

ELECTIONS

RE: Nominations - Petitions - Requisites

Under date of October 15, 1956, you submitted for our opinion the petition with three hundred signatures of electors of the sixth legislative district of Grand Forks County requesting that the name of James A. Graham of Grand Forks County be printed as the Democratic candidate for the office of senator for said district to be voted on at the special election to be held November 6 of this year. You request an opinion as to the correctness of your views regarding the sufficiency of the records filed by the candidate.

Section 16-0702 of the North Dakota Revised Code of 1943 provides as follows:

If a special election is called to fill a vacancy in any office for which a party nomination may be made, the proper party committee shall call a convention to make a party nomination for such office. The precinct committeemen of the county or district shall be duly convened and shall elect the required number of delegates to such convention."

It is the opinion of this office that your view that the record filed by the candidate James A. Graham is not a certificate of nomination as required by the law, section 16-0702. The only records filed are the affidavit of J.A. Graham, stating that he resides in the County of Grand Forks and State of North Dakota; that he is a qualified voter therein and a Democrat; that he is a candidate for nomination to the office of state senator to be chosen at the special election to be held on the sixth day of November, 1956, and requests that his name be printed upon the special election ballot as provided by law, as a candidate of the Democratic party for said office. This cannot be said to be a nomination as provided by section 16-0702 of the North Dakota Revised Code of 1943 for no committee has acted as far as the records show. There is nothing to show that any committee has called a convention as provided by said section, and therefore there is no certificate for nomination for any person to be placed on the ballot.

We now refer to sections 16-0302 and 16-0705 of the North Dakota Revised Code of 1943. There is no certificate of nomination filed as provided by section 16-0705. Section 16-0705 makes three requisites.

1. Contain the name of each person nominated, his post office address, and the office for which he is named.
2. Designate in not more than five words the party or principle which the convention represents.
3. Be signed and verified by the presiding officer and

secretary of such convention who shall add to their signatures their post office addresses.

These requisites have not been complied with and the certificate of nomination mentioned in section 16-0705 has not been complied with.

We call your attention to the fact that candidate James A. Graham who signed his name as J.A. Graham does not state that he is a resident of the sixth senatorial and representative district.

We now call attention to section 16-0302 and we find at the outset the following: "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. (Previously quoted) 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.

These requisites have not been complied with and no certificate has been filed in accordance with sections 16-0302 and 16-0705 and while there are three hundred signers to the petition filed, we find that at least twenty-three such names are void according to the decision of the Supreme Court of the State of North Dakota in the case of John Dawson v. Ben Meier recently decided.

It is, therefore, the opinion of this office that your views expressed in your communication to this office dated October 15, 1956, are correct.

LESLIE R. BURGUM

Attorney General