

**OPINION**  
**56-107**

August 22, 1956           (OPINION)

**ELECTIONS**

**RE: Vacancy on Ballot - Petitions**

We are in receipt of your letter of August 15, 1956, in which you ask for an opinion concerning the number of signatures necessary to place a person's name on the no-party ballot in the general election to fill the "vacancy" that exists for the office of county superintendent of schools. It appears that no one person qualified at the primary election.

Section 16-0807 of the 1953 Supplement sets forth the procedure to be used in filling a vacancy that exists in the no-party ballot. But note that the third paragraph of that section reads as follows:

\* \* \* A vacancy in the no-party ballot shall be deemed to exist when a candidate nominated at the primary election shall die, resign, or otherwise become disqualified to have his name printed on the ballot at the general election." (Emphasis supplied)

Since there was no person nominated in the primary election, the section is obviously inapplicable and cannot be used for the purposes stated in the present fact situation. It might be noted in passing that section 16-0807 as it appears in the 1943 Code could have been utilized for it then read, "\* \* \*Whenever a vacancy shall exist\* \* \* due to the failure of a candidate or candidates at the primary election to receive the number of votes required by section 16-0429, or for any other cause, such vacancy may be filled by \* \* \*."

Section 16-0507 of the Code, dealing with vacancies on ballots, does not apply to offices which must be chosen by the no-party ballot, but to offices which may be designated by party affiliation. See *Broderick v. Hall*, 73 N.D. 400, 15 N.W.2d., 465 (1944).

In view of the foregoing, it is the conclusion of this office that there is no procedure which can be followed for placing a person's name on the no-party general election ballot when the fact situation you pose arises. Of course, an elector may always vote by write-in or sticker. See section 16-1206.

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