

OPINION
56-49

April 13, 1956 (OPINION)

ELECTIONS

RE: Ballots - Is Vote on Measures Printed on Same Ballot With Office
Seeker's Names Void?

In your letter of April 9, 1956, you request an opinion as to whether the vote on a measure printed on the same ballot with the names of office seekers is void, in view of section 16-1107 as amended which states in effect that such measure "shall be printed on a separate ballot * * *."

Ordinarily, of course, attorneys consider the word "shall" in a statute to indicate that the statute is mandatory, rather than directory. Due to your excellent research leads, however, we were able to find the case of Fargo v. Sathre, 75 N.D. 341, 36 N.W. 2d. 39, which supports your view that in this instance the statute is merely directory. In that case the court's syllabus on the point is as follows: "The general rule with respect to elections is that all provisions of the elections law are mandatory, if enforcement is sought before election in a direct proceeding for that purpose; but after election all should be held directory only, in support of the result, unless of a character to effect an obstruction to the free and intelligent casting of the vote or to the ascertainment of the result, or unless the provisions affect an essential element of the election, or unless it is expressly declared by the statute that the particular act is essential to the validity of an election, or that its omission shall render it void."

Since your facts reveal none of the exceptions to the rule just quoted, and since we are satisfied that the Sathre case is persuasive authority as to said rule, we hold that the vote you refer to was valid.

LESLIE R. BURGUM

Attorney General