

**OPINION
58-104**

August 25, 1958 (OPINION)

ELECTIONS

RE: Party Committee Organization - State Committeeman

Selection of

In your letter of August 21, 1958, you raise a question which relates to the election of a state committeeman for the fortieth legislative district, which district includes Burke and Divide Counties. This question is as follows:

"Where two or more counties are embraced in a legislative district and they meet for the purpose of electing a member of the State Central Committee, are they entitled to cast a vote for each elected precinct committeeman as provided in section 16-1712 of the North Dakota Revised Code of 1943, or are they entitled to cast one vote for each precinct committeeman whether he is elected or appointed?"

Section 16-1712 of the North Dakota Revised Code of 1943 reads as follows:

"SELECTION OF DELEGATE TO STATE COMMITTEE WHEN TWO OR MORE COUNTIES EMBRACED IN LEGISLATIVE DISTRICT. When two or more counties are embraced in one legislative district, the county committee of each county shall meet as provided in section 16-1710 and shall elect a committee of three of its members to meet with a similar committee from the other county or counties comprising such legislative district, at the courthouse at the county seat of the senior county of such district, at two o'clock p.m. on the fourth Wednesday following their election, and shall proceed to elect a member of the state central committee from such legislative district. Each such county committee shall be entitled to cast votes equal to the number of precinct committeemen elected in its county in such manner and for such candidate as shall be determined by the majority of such committee acting personally or by proxy."

In 1949, the legislature amended section 16-1709 of the North Dakota Revised Code so that at present it reads as follows:

"COUNTY COMMITTEE OF POLITICAL PARTY - HOW CONSTITUTED. The precinct committeeman of a party, elected or appointed as provided in this chapter, together with the nominees for, and the members of the legislative assembly of that party, shall constitute the county committee of such party."

From this section, we draw the conclusion that appointed members of the county central committee shall stand on the same level with elected members. In a county consisting of one legislative district, or in a county having more than one legislative district, the

precinct committeeman who had been appointed in conformity with the above-quoted statute, would have a right to vote for the state committeeman of his choice. If section 16-1712, above quoted, is followed literally, an appointed precinct committeeman in a legislative district embracing two or more counties is in a different category. He would not be represented in the choice of a state committeeman from his legislative district. It does not seem to us that he should be thus penalized. Furthermore, the precinct in the county would lack representation in the choice of the state committeeman.

It seems to us that section 16-1709 was amended so as to increase the efficiency of the political organization by giving the precinct representation through an appointed committeeman. It would be in harmony with sound public policy to do that.

Section 16-1712 is an older statute than the statutes which provide for the appointment of precinct committeemen to fill vacancies and for the constitution of the county central committee as provided by section 16-1709. It is our thought that the more recent statutes which provide for the appointment of precinct committeemen to fill vacancies, and particularly the statute defining the words "County Committee of Political Party - How Constituted", give a wider interpretation to section 16-1712 of the North Dakota Revised Code of 1943, so that an appointed precinct committeeman may be included as the basis for representation in the election of the state committeeman. To the extent that this is accomplished, section 16-1712 is repealed by implication. It may be said here that the word "elected" as it appears in the last sentence of section 16-1712 is sometimes interchangeable with the word "appointed." See Van Cleve v. Wallace 13 N.W. 2d., 467.

Therefore, in our judgment the appointed precinct committeeman in both Burke County and Divide County should be included in the basis of representation in the process of electing a state committeeman, assuming, of course, that the appointment has been made in a regular manner and in conformity with the statute.

LESLIE R. BURGUM

Attorney General