

OPINION
58-23

June 3, 1958 (OPINION)

CITIES

RE: Establishment of New Ward

This is in reply to your request for an opinion of this office in regard to the recent establishment of a new ward in your city.

You inform us that on April 7, 1958, a petition, signed by a sufficient number of voters for the creation of a new ward in your city was filed with the city auditor of your city. The time and place for hearing the petition were designated and notice thereof was duly published in your official newspaper. The petition was approved, an ordinance was introduced, passed on first reading and is now being published prior to final action thereon.

Your first question is stated as: "When does the change in the number and boundaries of wards take effect?" We agree with your conclusion that the change in the number and boundaries of wards takes effect immediately upon final passage and approval of the ordinance, under the provisions of chapter 40-52 of the 1957 Supplement to the N.D.R.C. of 1943.

Your second question is stated as: "If the foregoing is correct, it is logical then that the usual provisions covering vacancies in the offices of aldermen would apply: i. e., either a special city election to fill such vacancies may be called (at the option of the council or mandatorily if petitioned pursuant to section 40-0808). Is this correct?" This question should, in our opinion, also be answered in the affirmative.

Your next point is stated as: "In connection with the new ward under the provisions of section 16-1703, it will apparently be impossible for petitions for precinct committeemen for the new wards to be filed in time to qualify for the forthcoming primary election. I therefore assume that such committeemen may only be elected by write-in ballot at such election." It is our opinion that under these circumstances, as there can have been no party nomination and as there is no statutory authority for filling such a vacancy on the ballot, such committeemen may be elected only by write-in ballots.

Your first telephoned question is as to whether new wards can be divided into precincts and if so in what manner. Section 40-2109 of the N.D.R.C. of 1943 would appear to provide that the ward itself shall constitute an election district. In so far as there has been no prior elections in the new ward as such it would appear that there would be no authority for either dividing or consolidating election districts in such new ward.

Your second telephoned question is as to the effect of the creation of the new ward, where an alderman elected from one of the old wards now finds himself a resident of the new ward by reason of the change

in boundaries. Section 40-0805 of the 1957 Supplement to the N.D.R.C. of 1943 provides that: "No person shall be eligible for the office of alderman if he:

1. Is not a qualified elector of and resident within the ward for which he was elected, except that in cities where aldermen are elected at large, he shall be a qualified elector of and a resident within the city * * *." While there is authority to the contrary, see: Scovill v. Cleveland, 1 Ohio St. 126, the more modern view would appear to be that where the alderman ceases to be a resident by reason of a legislative change of boundaries, he is disqualified from continuing to hold office and an immediate vacancy is thereby created. See: Ross v. Barber, 86 Mich. 380, 49 N.W. 35, People v. Highland Park, 88 Mich. 653, 50 N.W. 660, 62 C.J.S., section 503, 2 McQuillin Municipal Corporations, section 467. While the authorities we find apparently deal with the situation wherein the charter provisions expressly provide that the office shall become vacant by the alderman's removal from the ward, it is our opinion that the same result will obtain under our statutes.

Your last question is as to the effect of the change of boundaries on those persons who have filed nominating petitions as residents of old wards but by reason of the change in boundaries are now residents of the new ward. It is our opinion that in so far as under the provisions of section 16-1702 of the 1957 Supplement to the N.D.R.C. of 1943, each precinct committeeman shall be an elector of his precinct, such nominees could not take or hold the office as a result of the election unless, of course, they removed to the precinct from which they were nominated prior to the time they are to take office.

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