

**OPINION  
60-101**

April 22, 1960(OPINION)

ELECTIONS

RE: Concurrent Primary and Special Elections - Poll Lists and Poll Books For

This is in reply to your letter of 25 March 1960 in which you ask, with regard to the forthcoming special and primary elections, this office to express its opinion as to,

"whether or not the special election must be handled separate and apart so far as the registration of voters (poll list) and tally and summary are concerned or whether this vote can be included in the regular poll book with the tally and summary incorporated therein."

Though the forthcoming special election will be conducted contemporaneously with the primary election of June 28, the former is not conducted within the procedural framework of the latter. Said elections share only the date of occurrence. In all other respects they are separate and distinct, each being conducted within its own procedural framework. The Supreme Court of North Dakota has branded as "untenable" the proposition that a special election is ". . . properly a part of the primary election and is subject to the procedural requirements thereof, . . . ." See 74 ND 426, 432.

Section 16-0426 of the 1957 Supplement to the North Dakota Revised Code of 1943 requires, in part, that "The clerks of primary elections shall keep a list of the names of all persons voting at each primary election; . . . ." Section 16-1014 of the North Dakota Revised Code of 1943 requires a list be kept of those voting at general and special elections. The existence of separate statutory provisions of itself indicates that separate lists are to be kept.

This conclusion becomes irresistible upon consideration of the effect on the comparison required by section 16-1302 of the number of ballots cast with the number of names on the poll list if only one poll list is kept and if a voter, or voters, should cast a ballot in only one of the two elections. In such a situation, the number of ballots and the number of names on the poll list would be irreconcilable.

In regard to the matter of poll books: In that there will be two separate and distinct elections, viz., primary and special, and in that each is largely controlled by statutory provisions pertaining to it alone, it follows that there must be separate poll books for each.

In summary, it is the opinion of this office that separate poll lists and poll books are to be provided for the forthcoming primary and special elections.

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Attorney General