OPINION
60-187

August 10, 1960 (OPINION)

SCHOOL DISTRICTS

RE: Bond Election - Resolutions, Ballots, Notices

This office acknowledges receipt of your letter of August 2, 1960, in which you raise several questions with reference to the McVille Special School District No. 46 Bond Election held on June 6, 1960. You have asked for our opinion on this matter.

The number one problem submitted by you relates to the form of ballot used at the above election. Our understanding is that the inspector of the election initialed each ballot, stamping same with a rubber stamp before handing same to the voter. The rubber stamp was in form as follows:

"McVille Community Special

School District No. 46

McVille, N. Dak."

Your letter cites sections 16-1301, 16-1204 and 16-1111 of the North Dakota Revised Code of 1943. The meaning and effect of the provisions of section 16-1301, supra, appears clear from a reading of its provisions. A ballot not endorsed with the official stamp and initials "as provided in this title" is declared void and cannot be counted in the canvass of votes at any election. See Torkelson v. Byrne, 68 ND 13, 276 N.W. 134, 113 ALR 1213. The official stamp provided in title 16 of the North Dakota Revised Code of 1943 is required to carry the words "official ballot", the name or number of the precinct, the name or the county and the date of the election. Evidently the bond ballot in this instance, after stamping, nowhere carried the words "official ballot" the name or number of any precinct, the name of the county, nor the date of the election.

Reference to section 15-2809 of the North Dakota Revised Code of 1943 suggest that the heading "Official Ballot" and the date of the election are considered appropriate items of information to be carried on special school district ballots used in elections of members of the boards of education. Section 15-2810 provides that sections 16-1301 and 16-1204 shall apply to elections held to choose members of the board of education of a special school district. Section 21-0311 of the North Dakota Revised Code of 1943 specifies that a bond election shall be conducted and the returns made and canvassed as in the case of elections of members of the governing body. Thus, on the face of the statutes, it would seem that the strict provisions of section 16-1301 would operate to void any ballot not endorsed with the proper official stamp. It is submitted that such stamp for a bond election of a special school district should carry the information specified in section 16-1111 to the extent appropriate inasmuch as the provisions of that section would be

included by reference in section 16-1204, a section specifically made applicable to special school district elections by section 15-2810.

When the Wishek Hospital case was decided by Judge Porter, the court held the bond issue election illegal because the ballots were not endorsed with the official stamp as provided by title 16. The court commented that ". . . . it might be well for the legislative assembly of the State of North Dakota to rephrase our present statute to permit a more liberal interpretation and still truly safeguard the elections to the end that there will not be in the future a disenfranchisement of an entire vote as cast in this election. The courts, however, are powerless to legislate." See memorandum opinion dated October 23, 1952, County of McIntosh entitled J.G. Ritter . . . . v. The City of Wishek. . . . Former Attorney General (afterwards Justice of the Supreme Court) Nels G. Johnson represented those objecting to the Wishek bond issue. The case was not appealed, but received wide notice and the state departments have since been insisting that bond issue ballots be properly stamped and endorsed. A less strict rule is applied in other jurisdictions. For example, in Thompson v. Cihak, 254 Mich. 641, 236 N.W. 893, it was held that failure to initial the ballots did not void the election in the absence of "mandatory law requiring initialing."

You have commented that ". . . . this is a special, as it was an election held in conjunction of (sic) the regular annual school election, on June 6, 1960." Under the rather recent case of State v. Hall, 74 ND 426, 23 N.W. 2d. 44, an election held on the same day as a general election may nevertheless be a special election if it is one provided to accommodate special circumstances. The authorities cited by the court, particularly 29 CJS 14, show that an election at which a proposition is submitted would be a special election. It is difficult to understand that use of the adjective "special" on the ballot or in the proceedings could in any way mislead or prejudice anyone concerned. It is submitted that both the bond and the debt limit increase propositions were sufficiently out of the ordinary run or regular annual school election business that it was permissible to refer to the vote on both matters as special.

The number four problem stated on page 2 of your letter inquires as to publishing and posting the election notices where the school district lies partly in each of two counties. No authority is cited for the suggestion that publication and posting in each county is mandatory and I have found none. Section 21-0312 of the North Dakota Revised Code of 1943 contains no such requirement notwithstanding that section 21-0346 recognizes that municipalities, including school districts, will lie in more than one county. While section 15-0802 of the North Dakota Revised Code of 1943 refers to printing in one or more newspapers, the language would indicate permission rather than mandate. It is clear under this section that notice of the election to increase debt limit must be both printed and posted.

Where notice is required it should be given in each county if the area affected lies in more than one county.

Finally, the number five problem in your letter raises the question of sufficiency of the initial resolution, the specific objection to same being failure to state accurately in figures the dollar amount

of the full and true assessed valuation of taxable property in the district. Presumably that figure was at all times a matter of record in the office of the county auditors, although there might have been involved a problem in adding the Griggs and Nelson County valuations. Since the resolution referred to and gave fifty percent, any interested reader could have computed the full the true valuation by simply doubling the figure carried in the notice of election. While it is true that what was done is a departure from strict compliance, and cases such as Hughes v. Horsky, 18 ND 474, 122 N.W. 799 appear to make any departure fatal, it would seem extremely unlikely that any court would void the bond issue because of this roundabout method of stating the full assessed valuation of the taxable property in the district.

If it be that the action of the board in adopting the initial resolution for the bond issue at its meeting on April 28, 1960, was in all material respects proper and sufficient, the practical question may arise whether such resolution should be used in any proceedings hereafter had to issue bonds of the district for school purposes. Obviously it will not be possible to schedule another election within forty days of the date of the adoption of the initial resolution of April twenty-eight. With respect to a bond issue for which an initial resolution is adopted twenty days or more before and within forty days next preceding "any municipal election . . . ." it is provided that ". . . . the question shall be submitted at such municipal election." Although the attempt was made, it was not successful, and it will now be impossible to comply with the requirement of section 21-0311 of the North Dakota Revised Code of 1943 that the question of whether or not the initial resolution of April twenty-eight shall be approved must be submitted at the municipal election falling within the twenty day time interval. It would therefore seem reasonable to conclude that, under the circumstances, the initial resolution of April twenty-eight would not constitute a proper premliminary to a future bond election. Since it has not been legally acted upon by the voters, we submit that it can and should be rescinded and repealed. It seems to be a general rule "That the action of a school district may be reconsidered or rescinded at a subsequent legal meeting, (84) whether an annual or special meeting (85) and whether the previous action was at the annual meeting (86) or a special meeting (87), at least if such action has not been already carried into effect. (88)." See 78 CJS 943.

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