

OPINION
60-95

October 25, 1960 (OPINION)

ELECTIONS

RE: No-Party Ballot - Vacancy on General Election Ballot

This is in reply to your letter in which you state the following:

Clarence Carroll, the Stark County Register of Deeds, died on October twentieth. He was running for reelection and was the only person whose name is on the ballot printed for the November eighth election. Now there apparently are several people who are intending to run for the vacancy and of course wish to get their names on the ballots if possible rather than running as ordinary sticker candidates."

You then ask, how may of these individuals have their names places on the ballot, if at all; when may such petitions, if they may be filed at all, be filed with the proper office.

Section 16-0807 (1957 Supplement to the N.D.R.C. of 1943) appears to be the controlling statute. The second paragraph, which provides as follows, seems to cover your situation.

Whenever a vacancy shall exist on a no-party ballot in a county or district within a county, such vacancy may be filled by filing with the county auditor at least thirty days prior to the general election a written petition as provided in section 16-0404 of the North Dakota Century Code of 1943, stating that the petitioner desires to become a candidate for election to the office for which a vacancy exists. The petition for the nomination of any person to fill such vacancy shall be signed by qualified electors equal in number to at least thirty percent of the total vote cast for governor at the preceding general election in the county or district."

Under the last paragraph of 16-0807 the facts as submitted would constitute a vacancy as contemplated above. It must be observed that the petition to fill such a vacancy must be filed with the county auditor at least thirty days prior to the general election. The filing of a petition within the statutory period of time has been deemed and declared mandatory by the North Dakota Supreme Court. See State ex. rel. William J. Anderson v. Fred Falley, 9 N.D. 464, and also 20 N.D. 405.

It would thus appear that a petition may no longer be filed because the time now is less than thirty days before the election.

In your letter you make reference to section 16-0508 which provides for the use of printed stickers to be made available to the electors where a vacancy occurs before election day and after the printing of the ballots. Of course you will notice that this section among other things refers to a person who is nominated according to the

provisions of this title to fill such vacancy. If this provision is applicable, it would still require an official nomination. The manner in which nominations may be accomplished is set forth in 16-0807.

It is altogether possible that such section might not have application to an office in the no-party ballot. The North Dakota Supreme Court in Broderick v. Hall, 73 N.D. 401 seems to suggest that the provisions under chapter 16-05 seem to apply to offices which are normally filled by political parties. Whether or not section 16-0508 applies to the office of no-party ballot seems to be of no consequence in this particular instance.

Even if such section were applicable to the instant matter such person would first have to be nominated in accordance with the provisions of this title. The manner in which a person may be nominated to fill a vacancy in a no-party office is set out in section 16-0807. The time factor does not permit any further nominations at this time for a no-party office.

It is, therefore, our opinion that there is no provision whereby a person may be nominated to fill the vacancy which was created as a result of the death of Clarence Carroll, the only candidate who would have appeared on the ballot in the general election. As such, no names may be placed on the ballot.

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