

N.D.A.G. Letter to Knell (Oct. 23, 1990)

October 23, 1990

Honorable Gary Knell
District 33
Box 233
Hazen, ND 58545

Dear Representative Knell:

Thank you for your recent letter requesting an opinion concerning N.D.C.C. § 16.1-12-03. Specifically, you inquire whether a person may seek nomination to more than one office at the same election. A member of my staff informs me that your concern is with a person running for the office of state's attorney as well as for the office of a member of the legislative assembly from a multi-county legislative district at the same election.

In 1986, I issued an opinion concluding that N.D.C.C. § 16.1-12-03 prohibited a person from submitting more than one certificate of endorsement or from submitting more than one petition to an election official resulting in that person's name being placed upon the same election ballot for more than one office. 1986 N.D. Op. Att'y Gen. 125. My conclusion was based upon statutory language within N.D.C.C. § 16.1-12-03 which prohibited a person from accepting a nomination to more than one office on the general election ballot.

After my opinion was issued, the North Dakota Legislature amended N.D.C.C. § 16.1-12-03. 1987 N.D. Sess. Laws ch. 254. By that amendment, the following language was added to this statute:

Except for persons holding or seeking nominations to offices filled by electors of the entire state or of any district greater than a county and except for persons holding or seeking nomination to the office of county judge, any person elected or appointed to an office appearing on the no-party ballot or seeking nomination and election to a no-party office may also seek nomination to legislative office and may serve in the legislative assembly.

Id. Concededly, it is difficult to read this statutory language because the preliminary part of the sentence is an exception to the latter part of the sentence. To better understand this sentence I believe it is helpful to invert the two primary clauses within the sentence. In this manner, the sentence can be read as follows:

Any person elected, appointed, or seeking nomination and election to an office appearing on the no-party ballot may also seek nomination to a legislative office and may serve in the legislative assembly unless the person is holding or seeking nominations to offices filled by electors of the

entire state or of any district greater than a county or the person is holding or seeking nomination to the office of county judge.

To summarize, N.D.C.C. § 16.1-13-03, as amended, allows persons to seek nomination and election to a no-party office and to the legislative assembly at the same election with two exceptions. The first exception refers to persons holding or seeking nominations to offices filled by electors of the entire state or of any district greater than a county. The second exception refers to persons holding or seeking nominations to the office of county judge. It is unclear whether the first exception (nominations to offices filled by electors of the entire state or of any district greater than a county) refers to the no-party office or to the legislative office. After reviewing legislative history, it is my conclusion that this exception refers to the no-party office and not to the legislative office.

In its original form, Senate Bill No. 2420 (which ultimately became 1987 Sess. Laws ch. 254) contained an exception only for those persons holding or seeking nominations to offices filled by electors of the entire state or of any district greater than the county. When the bill was heard by the Senate Judiciary Committee, Senator Stenehjem questioned the desirability of county judges sitting in the Legislature. Hearing on S. 2420 before the Senate Comm. on the Judiciary, 50th N.D. Leg., (January 28, 1987). In response to Senator Stenehjem's concern, an amendment was proposed prohibiting persons holding or seeking nomination to the office of county judge, from attempting to seek nomination to the legislative assembly. Hearing on S. 2420 before the Senate Comm. on the Judiciary, 50th N.D. Leg., (February 3, 1987). The amendment was adopted and the bill was enacted in this form. 1987 N.D. Sess. Laws ch. 254.

The exception for persons holding or seeking the office of county judge was added to that portion of Senate Bill No. 2420 which already excepted persons holding or seeking nominations to offices filled by electors by the entire state or of any district greater than a county. From this action, it appears the legislature intended the "exception" portion of this statute to refer only to the no-party office rather than to the legislative office. Thus, I do not believe it was the Legislature's intent to allow a person holding or seeking a no-party office to also seek at that same election, nomination and election to only those legislative districts the size of or smaller than a county. Instead, a person holding any no-party office not exempted by N.D.C.C. § 16.1-12-03 may seek election to any legislative district.

My conclusion is also supported by testimony provided by proponent of Senate Bill No. 2420. In response to a question from a committee member, the witness testified that if the amendment were adopted, state's attorneys could run for the legislature. No distinction was made between county or multi-county legislative districts. Hearing on S. 2420 before the Senate Comm. on the Judiciary, 50th N.D. Leg., (January 28, 1987) (statement of Mr. Johnson).

Therefore, it is my opinion that a person may seek nomination to the office of state's attorney and to a multi-county legislative district at the same general election based upon the 1987 amendment to N.D.C.C. § 16.1-12-03.

Sincerely,

Nicholas J. Spaeth

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