

N.D.A.G. Letter to Kusler (April 7, 1992)

April 7, 1992

Honorable Jim Kusler
Secretary of State
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Secretary of State Kusler:

Thank you for your March 25, 1992, letter in which you ask several questions regarding reorganization of precincts and political parties in response to the recent redistricting.

The first issue is whether, pursuant to North Dakota Century Code (N.D.C.C.) § 16.1-04-03, counties must reestablish precinct boundaries within 35 days of the reapportionment or whether they may reorganize up to 70 days prior to the election. N.D.C.C. § 16.1-04-03 provides as follows:

16.1-04-03. Time limitations. The authority granted by this chapter must be exercised by the respective governing bodies no later than seventy days before an election. If legislative reapportionment occurs, the authority granted by this chapter must be exercised, as it relates to the establishment or reestablishment of voting precincts that may be required because of any change in legislative districts, within thirty-five days after the effective date of the reapportionment.

The language in the statute is specific and mandatory. If legislative reapportionment occurs and as a result the voting precincts must be reestablished or new precincts established, such action must be taken within 35 days of the effective date of reapportionment. The effective date of the recent reapportionment was December 1, 1991, and, therefore, the counties must have established their precinct boundaries where such changes were necessitated by the reapportionment within 35 days, or by January 6, 1992.

N.D.C.C. § 1-02-07 provides that whenever a general provision in a statute is in conflict with a specific provision in the same statute, the two must be construed to give effect to both if possible. If the conflict cannot be reconciled, the special provision governs over the general. N.D.C.C. § 1-02-07. The Legislative Assembly, in adopting N.D.C.C. § 16.1-04-03, set forth the general authority of the counties to reorganize precincts within 70 days before an election, and then added a specific requirement when legislative reapportionment occurs. The specific provision for establishing or reestablishing precincts following legislative reapportionment is an additional requirement that must be met in certain circumstances. It can, therefore, be reconciled with the general provision. It is my

opinion that following a legislative redistricting, any reestablishment of voting precincts required by the reapportionment must be completed within 35 days of the effective date of redistricting.

The second issue is whether, following reorganization of voting precincts within 35 days of redistricting, the counties may reorganize a second time if they do so at least 70 days prior to the election. The general authority in N.D.C.C. § 16.1-04-03 provides that the authority to reestablish precinct lines must be exercised no later than 70 days before an election. As indicated above, the Legislative Assembly provided specific provisions for reorganization of voting precincts in years of redistricting. However, having provided this additional requirement, the Legislative Assembly did not restrict counties from reorganizing voting precincts for other purposes within 70 days prior to an election. While the Legislative Assembly may have intended to limit the governing bodies in a redistricting year to reorganizing the voting precincts within 35 days of the date of redistricting, there is no exclusion as to the 70-day requirement. When a statute is clear and unambiguous, the letter of the statute cannot be disregarded under the pretext of pursuing its spirit because the legislative intent is presumed to be clear on the face of the statute. Wills v. Schroeder Aviation, Inc., 390 N.W.2d 544 (N.D. 1986). It is my opinion that even if a county has reorganized its voting precincts within 35 days of redistricting pursuant to N.D.C.C. § 16.1-04-03, it may reorganize again as long as such reorganization is done at least 70 days prior to the election.

The final issue is whether the political parties must reorganize twice pursuant to N.D.C.C. ch. 16.1-03 if the counties are allowed to reorganize within 35 days of redistricting and again at least 70 days prior to an election. N.D.C.C. § 16.1-03-01 requires a precinct caucus to be held on or before May 15 following each general election. At that caucus the political parties elect their precinct chairperson, committeepersons, and conduct party business. N.D.C.C. § 16.1-03-03. No other precinct caucuses are required by statute except when the provisions of N.D.C.C. § 16.1-03-17 apply.

N.D.C.C. § 16.1-03-17 provides, in part:

16.1-03-17. Political party reorganization after apportionment. If apportionment of the legislative assembly becomes effective after the organization of political parties as provided in this chapter and before the primary or the general election, the secretary of state shall establish a timetable for the reorganization of the parties as rapidly as possible before the ensuing election. When the timetable is established, the secretary of state shall notify all the county auditors of the timetable and of the details of the legislative apportionment as it affects each county. The secretary of state or county auditor may not require reorganization of precincts in which boundaries are unchanged after apportionment by the board of county commissioners or the governing body of the city pursuant to chapter 16.1-04.

. . . .

The political parties, in the newly established precincts and districts, shall then proceed to reorganize as closely as possible in conformance with this chapter and in conformance with the timetable established by the secretary of state.

This statute requires that political parties reorganize following redistricting and the subsequent reorganization of the voting precincts.

Under the provisions of N.D.C.C. ch. 16.1-04, the voting precincts could be reestablished 70 days before each election. This could result in reestablishment of the boundaries before both the primary and the general election. However, under N.D.C.C. ch. 16.1-03, the political parties are required to call only one precinct caucus per year, with the limited exception in N.D.C.C. § 16.1-03-17. If the Legislative Assembly had intended that the political parties reorganize each time the precinct boundaries are reestablished, it could have easily so provided in N.D.C.C. ch. 16.1-03.

I trust this responds to your inquiry.

Sincerely,

Nicholas J. Spaeth

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