

**OPINION
69-158**

February 25, 1969 (OPINION)

Mr. Robert Q. Price

State's Attorney

Cavalier County

RE: Elections - Absent Voter Ballots - Special County Elections Excl

This is in response to your letter in which you state that Cavalier County Memorial Hospital Association has made application to the County Commissioners of Cavalier County to call a special election, and the election has been called. You further advise that electors who are anticipating being absent from the county on the day of election have asked for absent voter ballots. You then ask for an opinion whether or not the present statutes permit the use of an absent voter ballot in this type of election. We are assuming that the election to which you refer is a special county election under Chapter 23-18 of the North Dakota Century Code.

Section 16-18-01 of the North Dakota Century Code, as amended, and as is material here, provides as follows:

Any qualified elector of this state, who is absent from the county in which he is an elector, or who by reason of physical disability, or who is in the military or naval service or the merchant marine of the United States of America, and, is unable to attend at the polling place in his precinct to vote at any general, special or primary state election, or at any city, village, or school election, may vote an absent voter's ballot at any such election as hereinafter provided."

It is significant to note that county elections are not included in the enumerated elections at which absentee ballots may be used. The reference to county is only as a qualifying factor as to when the ballot may be used. It is observed that the elector must be absent from the county before he is entitled to vote by absentee ballot, except as provided for in Section 16-18-02, which permits a voter who is present in the county after the official ballots have been printed but believes that he will be absent, may vote by absentee ballot before he leaves the county. However, said section again refers to Section 16-18-01 as being the election at which absentee ballots may be used. While it may be strongly argued that the Legislature intended to include all special elections, nevertheless under the "exclusio" rule and the wording of Section 16-18-01, we are limited to the specific types of elections enumerated in Section 16-18-01, at which absentee ballots may be used.

It is therefore our opinion that a special county election is not an election at which the Legislature authorized the absentee ballot to be used. We are not aware of any reason why county elections were not included in Section 16-18-01. Anything we might say in that respect would be speculative. At the same time, we know of no reason

why the Legislature would not include such county elections if the matter were brought properly before the Legislature.

HELGI JOHANNESON

Attorney General