

LETTER OPINION
94-L-54

March 14, 1994

Alvin A. Jaeger
Secretary of State
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Jaeger:

Thank you for your February 2, 1994, letter concerning the practice of certain individuals leaving unattended nominating petitions at locations within county courthouses and city halls. You ask whether such practices violate N.D.C.C. ?? 16.1-10-01, 16.1-10-02, or other relevant provisions of law.

Generally, state statutes addressing candidate nominating petitions require that such petitions contain certain information and be signed by a certain number of qualified electors. See, e.g., N.D.C.C. ?? 16.1-11-06, 16.1-11-11, 16.1-12-02, 40-21-07. These statutes do not indicate under what circumstances the petition must be signed.

N.D.C.C. ? 16.1-10-01 provides that a "person is guilty of corrupt practice within the meaning of this chapter, if he willfully engages in . . . the use of state services or property for political purposes." N.D.C.C. ? 16.1-10-02(1) provides that "[n]o person may use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or any agency, department, bureau, board, or commission thereof, for any political purpose."

In a previous letter issued by this office concerning N.D.C.C. ? 16-20-01.1, the predecessor to present

Alvin A. Jaeger
March 14, 1994
Page 2

N.D.C.C. ? 16.1-10-02, it was noted:

Section 16-20-01.1, N.D.C.C., prohibits the use for political purposes any property or services owned by or under lease to the state or any agency, department, bureau, board, or commission of the state. The language of this section clearly limits its applicability to state property and services and cannot be construed to include political subdivision property or services. . . . Our conclusion, however, that Section 16-20-01.1, N.D.C.C., does not apply to political subdivision property or services should not be construed to mean that such property or services may be used for political purposes.

Letter from Assistant Attorney General Owen L. Anderson to Charles D. Orvik, Pierce County State's Attorney (October 13, 1978).

Former N.D.C.C. ? 16-20-01.1 also was construed by the North Dakota Supreme Court in the case of Saefke v. Vande Walle, 279 N.W.2d 415 (N.D. 1979). In that case, the court determined that the Corrupt Practices Act is penal in nature and thus must be strictly construed. Id. at 417. Consequently, N.D.C.C. ?? 16.1-10-01 and 16.1-10-02 cannot be expansively read to cover property or services of political subdivisions.

Therefore, it is my opinion that the practice of leaving unattended nominating petitions in locations in a county courthouse or city hall does not violate the provisions of N.D.C.C. ?? 16.1-10-01 or 16.1-10-02 since those locations are property of political subdivisions and not of the state. This opinion does not attempt to address whether the practice of leaving unattended nominating petitions on state property constitutes a violation of N.D.C.C. ?? 16.1-10-01 or 16.1-10-02.

N.D.C.C. ? 48-08-06 provides that the governing body of any county, city, or township may permit the use of "any public building or any part of a public building

Alvin A. Jaeger
March 14, 1994
Page 3

under its charge for any legal purpose, giving equal opportunity to all persons, and without religious or political distinctions, and may make such reasonable rules and restrictions on the use of such building as may seem necessary." You indicate in your letter that the practice of leaving nominating petitions on counters in county and city buildings is primarily a practice of incumbent officer holders. Whether competing office seekers are allowed the same privilege may have an impact on the lawfulness of the practice.

If you receive such complaints in the future, you may wish to advise any individuals complaining about such practices to bring the matter to the attention of the local state's attorney for review and investigation. A state's attorney would be the appropriate official to determine whether to institute a criminal charge.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jjf\las\jfl