

**LETTER OPINION
2006-L-33**

October 4, 2006

Ms. Kimberly J. Radermacher
LaMoure County State's Attorney
PO Box 39
Ellendale, ND 58436-0039

Dear Ms. Radermacher:

Thank you for your letter asking whether a person appointed to fill a vacancy in the office of state's attorney must be a resident of the county for 30 days prior to the appointment. You also asked whether a person circulating a petition to appear on the ballot for the state's attorney position must be a resident of the county at the time the petition is circulated.

It is my opinion that a person appointed to fill a vacant state's attorney position must have resided in the county for at least 30 days before the appointment in order to qualify for office. It is my further opinion that a candidate for state's attorney need not be a resident of the county at the time the candidate circulates petitions but must be a resident at least 30 days prior to the general election.

ANALYSIS

The state's attorney's office in Lamoure County is an elected position. The office became vacant on September 7, 2006.¹ A person appointed to fill a vacant office "shall qualify within the time and in the manner required of a person elected or appointed to such office for a full term."² Generally, a person elected as state's attorney must be a qualified elector in the county in which the person is chosen.³ As a result, to qualify in the manner required of a person elected to the office of state's attorney, the individual appointed must be a qualified elector.⁴ To be a qualified elector, a person must be a United States citizen, at least 18, a resident of this state, and must have resided in the precinct at least 30 days before an election.⁵ Therefore, it is my opinion that a person appointed to fill a vacant state's attorney position must have resided in the county for at least 30 days before the appointment in order to qualify for office.⁶

You also ask whether a person circulating petitions to have that person's name placed on the ballot for the state's attorney position for the general election in November must be a resident of the county at the time the petitions are circulated. In N.D.A.G. 98-L-57, this office concluded that a

¹ E-mail from State's Attorney Kim Radermacher (Sept. 28, 2006).

² N.D.C.C. § 44-02-09; N.D.A.G. 98-F-31.

³ N.D.C.C. § 11-10-04; N.D.A.G. 98-F-31.

⁴ N.D.A.G. 2002-L-67.

⁵ N.D. Const. art. II, § 1; N.D.C.C. § 16.1-01-04.

⁶ See N.D.A.G. 98-F-31 (citing N.D.A.G. 94-F-23).

candidate for sheriff, who was a resident of South Dakota, was not required to be a qualified elector of the county in order to circulate petitions, run in the primary election, or have the candidate's name placed on the general election ballot.⁷ The opinion was based on North Dakota Supreme Court decisions reasoning that unless otherwise specified, statutes dealing with eligibility refer to qualifications to hold office rather than qualifications to be a candidate for office.⁸ The opinion further provided, however, that if the person were elected, that person would have to meet all applicable requirements in time to qualify for and assume the office of sheriff.⁹ Section 11-10-04, N.D.C.C., requires candidates for election to a county office to be, at the time of the election, a qualified elector in the jurisdiction in which the candidate is to serve.¹⁰ Thus, it is my opinion that a candidate for state's attorney need not be a resident of the county at the time the candidate circulates petitions but must be a resident of the county at least 30 days prior to the general election.¹¹

Sincerely,

Wayne Stenehjem
Attorney General

jak/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹²

⁷ N.D.A.G. 98-L-57 preceded changes to N.D. Const. art. VII, § 8. That provision now requires that a candidate for sheriff "must be a resident in the jurisdiction in which the candidate is to serve at the time of the election." Id.

⁸ Id., citing Nielsen v. Neuharth, 331 N.W.2d 58 (N.D. 1983), and Enge v. Cass, 148 N.W. 607 (N.D. 1914).

⁹ N.D.A.G. 98-L-57.

¹⁰ N.D.C.C. § 11-10-04(3).

¹¹ In N.D.A.G. 98-L-57, this office said:

N.D.C.C. § 16.1-11-11 requires a candidate for county office to present a nominating petition to the county auditor "of the county in which the candidate resides. . . ." An argument could be made that the statute requires a candidate to at least reside in the county in which such person is a candidate. However, in construing a similar provision contained in former N.D.C.C. § 16-04-04, Attorney General Allen I. Olson opined that the statute is procedural only and does not "substantively speak to a candidate's qualifications for office." Letter from Attorney General Allen I. Olson to Ronald G. Splitt (September 14, 1978).

¹² See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).