

**OPINION
48-122**

March 3, 1948 (OPINION)

ELECTION

RE: Constitutional Amendments to Be Submitted at Primary

This is in reply to your letter of some time ago inquiring whether the constitutional amendments proposed by the 1947 Legislative Assembly are to be submitted at the primary election or the general election in June and November, respectively.

Chapter 123 of the 1947 Session Laws is a concurrent resolution for an amendment to the state constitution authorizing the issuance, sale, and delivery of bonds of the state of North Dakota in the sum not to exceed \$27,000,000, to be used in the payment of an adjusted compensation to North Dakota veterans of World War II. This proposed amendment provides specifically that it shall be submitted to the qualified electors for approval or rejection at the primary election in June, 1948.

Chapter 119 of the 1947 Session Laws is a concurrent resolution for an amendment to the state constitution providing for a special levy of one mill upon all taxable property within the state of North Dakota to produce a fund for the North Dakota State Medical Center at the University of North Dakota. It provides specifically that it shall be submitted to the qualified electors of North Dakota for approval or rejection at the general election held in November, 1948.

Chapter 120 of the 1947 Session Laws is a concurrent resolution for an amendment to the state constitution permitting a special two-mill levy for ten consecutive years upon all taxable property within the state of North Dakota, to be credited to the post-war rehabilitation reserve fund. It provides specifically that it shall be submitted to the qualified electors of North Dakota for approval or rejection at the general election in November, 1948.

Chapter 118 of the 1947 Session Laws is a concurrent resolution for an amendment to the state constitution, permitting municipal liquor stores. It provides specifically that it shall be submitted to the qualified electors of the state of North Dakota for approval or rejection at the next general election, in accordance with the provisions of section 202 of the constitution of the state of North Dakota, as amended.

The next general election following the proposed amendment will be the first Tuesday after the first Monday in November of 1948. This must necessarily be so under the provisions of section 16-0601 of the North Dakota Revised Code of 1943, which defines "general elections" as follows:

On the first Tuesday after the first Monday in November of each even numbered year, an election shall be held in the several election districts of this state, which shall be known as the general election."

Chapter 122 of the 1947 Session Laws is a concurrent resolution for an amendment to the state constitution, authorizing the legislative assembly to fix the compensation and expenses of the elective officers of the state and of the members of the legislative assembly. It provides specifically that it shall be submitted to the qualified electors of North Dakota for approval or rejection at the next general election. What we have said with reference to chapter 118, supra, applies also to chapter 122 with reference to the submission to the qualified voters for approval or rejection.

Chapter 121 of the 1947 Session Laws is a concurrent resolution for an amendment to the state constitution, authorizing and directing the state board of equalization to levy a tax of four mills on the dollar of the assessed valuation of all taxable property in the state, in addition to the four mill levy authorized under section 174 of the Constitution. It provides specifically that it shall be submitted to the qualified electors of North Dakota for approval or rejection in accordance with the provisions of section 202 of the constitution, but does not specify whether it is to be submitted at the primary election or at the general election in 1948.

The first paragraph of section 25 of the state constitution of North Dakota, as amended, provides as follows:

The legislative power of this state shall be vested in a legislature consisting of a senate and a house of representatives. The people, however, reserve the power, first, to propose measures and to enact or reject the same at the polls; second, to approve or reject at the polls any measure or any item, part or parts of any measure enacted by the legislature."

It will be observed that the constitution does not specify the election at which a proposed amendment shall be submitted to the electors; it simply provides that "it shall be submitted to the electors and if a majority of the votes cast thereon are affirmative, such amendment shall be a part of this constitution."

The constitutional amendment proposed by chapter 121 of the 1947 Session Laws does not specify whether it is to be submitted at the general or primary election, but provides that it shall be submitted to the qualified electors of North Dakota for approval or rejection in accordance with the provisions of section 202 of the constitution.

This is a constitutional amendment proposed by the legislative assembly through a concurrent resolution. All concurrent resolutions are filed in the office of the secretary of state, and, therefore, he has official knowledge of their contents. The secretary of state, as a state officer, is required, in the interest of the public, to discharge the duties of his office as promptly and expeditiously as practicable, and since a proposed amendment to the constitution, originating in the legislative assembly, is officially brought to his attention by the filing of same in his office, the presumption is

that it shall be submitted to the qualified electors of the state for approval or rejection at the first state-wide election after such filing.

The amendment to the constitution proposed by chapter 121 of the 1947 Session Laws was filed in the office of the secretary of state on March 10, 1947. The first state-wide election occurring in the state thereafter will be the primary election fixed by law, namely, section 16-0401 of the North Dakota Revised Code of 1943, as the last Tuesday in June of every year in which a general election occurs.

There would be no valid reason for holding a proposed constitutional amendment in the office of the secretary of state beyond the date of the first state-wide election occurring after the filing of same.

It is true that the amendments to the constitution proposed by initiated petitions must be filed with the secretary of state at least ninety days prior to the election at which they are to be voted on, but this provision would not apply to a concurrent resolution originating in the legislative assembly, and even if it did apply, the amendment proposed by chapter 121, supra, was in the office of the secretary of state on March 10, 1947, and, therefore, would be filed in ample time for submission at the first state-wide election thereafter.

It is our opinion, therefore, that the constitutional amendment proposed by chapter 121 of the 1947 Session Laws should be submitted to the qualified electors of the state for approval or rejection at the primary election to be held on the last Tuesday in June 1948.

NELS G. JOHNSON

Attorney General