

OPINION
66-227

February 11, 1966 (OPINION)

Mr. Albert A. Wolf

State's Attorney

Burleigh County

RE: Printing - Election Ballot - Cost

This is in response to your request for an opinion as to the printing charges for publishing the sample ballot preceding elections. You advise that the rate charged varies from county to county. You also submit for our examination copies of the printed ballots and publications of the sample ballots as they appeared in the various official newspapers.

The form of the election ballot is prescribed in section 16-11-04 of the North Dakota Century Code. As is material here, this section merely provides that the ballot be white in color and be uniform in quality of paper, and that black ink be used.

As to publishing the sample ballot, section 16-04-13 as pertaining to primary elections provides as follows:

16-04-13. COUNTY AUDITOR TO PUBLISH SAMPLE PRIMARY ELECTION BALLOT AND NOTICE OF TIME AND PLACE OF ELECTION. The county auditor shall publish in the official county newspaper and if no newspaper is published in the county then in a newspaper published in an adjoining county in the state:

1. A copy of the sample ballot of the primary election, as arranged by order and direction of the persons charged with such duty. The form of the ballot so published shall conform in all respects to the form prescribed for the sample primary ballot and the makeup and general form shall conform to that prescribed for said sample ballot, and shall be printed in either six point or six point type;

* * *."

The publication of the sample ballot is covered in section 16-06-02 of the North Dakota Century Code. The language which is material here provides as follows:

* * * The form of the ballot so published shall conform in all respects to the form prescribed for the sample general election ballot and the makeup and general form shall conform to that prescribed for said sample ballot, and shall be printed in either 6-point or 8-point type."

It is observed that no provision is found in Title 16 setting forth

specifically the form to be used for a ballot as pertaining to quality, weight or size of paper. Section 16-11-04 prescribes that the paper is to be white, that it is to be of uniform quality and that it is to be of sufficient length to contain the names of the candidates, but as to specific type to be used and the other matters mentioned above, the statute is silent.

Under the provisions of section 16-11-03 it is observed that the county auditor in the statewide elections is required to prepare the ballot. In the absence of any other specific provisions we must conclude that the county auditor has the discretion in determining the size of type to be used and the size of the ballot. However, we believe that the provisions of sections 16-04-13 and 16-06-02, at least by implication, limit the size of type to either 6-point or 8-point. In the absence of any other statutory provision it also appears that the county auditor may direct the size of print to be used in publishing the official ballot. The size of print and the size of the ballot naturally will determine the cost of printing for the official ballot, the sample ballot and for newspaper publishing. The other factor which would control, at least to some degree on the cost of the ballot, would be the weight and quality of the paper. In the absence of any statutory provisions the county auditor would be responsible in selecting the weight and quality of the paper to be used for the sample ballot and the official ballot.

It is therefore our opinion that the rate or cost of printing the sample ballot, the official ballot and the publishing of the ballot in the official newspaper is determined by the size of print to be used, which is left to the sound discretion of the county auditor, but is limited to size point 6 or point 8 type.

The other factor as pertaining to the sample ballot and official ballot is the weight and quality of paper. Here again it is our opinion that the county auditor is charged with the preparation of the ballot and as such may select the weight and quality of the paper. In doing so he may consult with the printers to determine what paper is best suited for the occasion and will be the most economical to use under the situation. The number of ballots printed would, of course, to some degree determine the cost of printing.

As a point of interest it is observed that section 11-11-26 of the North Dakota Century Code requires that the board, when the amount exceeds \$1,000.00 for election ballots, shall advertise for bids to be published at least once each week for two successive weeks in the official newspaper of the county and in such other newspapers as it shall deem advisable. The first publication shall be made at least thirty days prior to the day set for the opening of the bids. The subsequent sections all pertain to the manner in which the bids are to be received and considered.

We also wish to call your attention to section 11-11-30 of the North Dakota Century Code which provides that the contract for furnishing of election ballots and supplies shall be let by the board of county commissioners at its first regular meeting in April of each year to run for a period of one year. The contracts entered into would, of course, have some bearing on the preparation of the ballot, which duty is imposed upon the county auditor.

HELGI JOHANNESON

Attorney General