



1948

## General Election

Nels G. Johnson

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of Indian children, it is our opinion that the state would have authority to enter into such a contract, through the Department of Public Instruction.

2. Under the circumstances it would not be necessary for the Legislature to enact enabling legislation before such a contract could be entered into by the State and the Indian Affairs.

3. Since the schools eligible are legal schools of the school system of the State of North Dakota, the Indian children attending same would necessarily be included in the matter of distribution from the several branches of the State Equalization Fund.

Yours very truly,  
 NELS G. JOHNSON  
 Attorney General  
 By P. O. SATHRE  
 Assistant Attorney General

POS:L

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“GENERAL” ELECTION

November 28, 1947

Mr. Myron H. Atkinson  
 City Auditor  
 City of Bismarck  
 Bismarck, North Dakota

Dear Mr. Atkinson:

This will acknowledge your letter in which you ask whether Chapter 118 of the 1947 Session Laws, which is in the nature of a concurrent resolution providing for an amendment to the Constitution of the state of North Dakota permitting municipal liquor stores, should be submitted to the qualified electors of the state for approval or rejection at the state-wide primary election or at the next general election.

The specific question involved in your letter is whether the state-wide June primary election of 1948 is a general election. Section 124 of the North Dakota Constitution provides for general elections of the state to be held biennially on the first Tuesday after the first Monday in November. Chapter 118 of the 1947 Session Laws states “that the following amendment to the Constitution of the State of North Dakota is agreed to and 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; \* \* \*.”

Section 16-0601 of the North Dakota Revised Code of 1943 states:

“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.*”

Section 16-0401 N.D.R.C. 1943 provides for a primary election. This is to be held on the last Tuesday of June in each year in which *a general election occurs.*

The statute further provides that this is “in lieu of party caucuses and conventions,” and that its purpose is the nomination of candidates for the following offices to be voted for “*at the ensuing general election.*” Then it goes on to enumerate the offices for which nominations are to be made.

In the case of *Walton v. Olson*, 40 N. D. 571, 170 N.W. 107, the Supreme Court held that the primary election provided by our law takes the place of the former nominating conventions.

A primary for the purpose merely of making nominations is *not an election* within the meaning of Section 47 of the State Constitution. *Leu v.*

*Montgomery*, 31 N. D. 1, 148 N.W. 662. See also 29 C.J.S., section 1 (d), pages 14 and 15. 20 C. J. page 57, paragraph 4.

While a primary election is a state-wide election, it is not a general election, and since Chapter 118 of the 1947 Session Laws provides that the amendment shall be submitted to the qualified electors of the state for approval or rejection at the next general election, it refers to the general election provided for in Section 124 of the Constitution and defined in Section 16-0601.

It is, therefore, the opinion of this office that this amendment must be submitted for approval or rejection to the electors of the state at the general election to be held on the first Tuesday after the first Monday in November of 1948.

Very truly yours,  
NELS G. JOHNSON  
Attorney General

NGJ:nb

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INSANITY PROCEDURE

November 8, 1947

Mr. R. H. Sherman, Member  
Board of Administration  
Bismarck, North Dakota

Dear Judge Sherman:

This office received your letter today asking for our opinion on a question submitted by Dr. Fisher, superintendent of the Jamestown hospital.

According to Dr. Fisher's letter, there are several patients at the Jamestown hospital who have been sent there from the penitentiary at Bismarck. During their stay at the Jamestown hospital, their sentences have expired but they are still at the hospital.

The question presented is: first, should these patients be brought before an insanity board and if found to be insane be recommitted to the hospital, and second, if such action is to be taken, how are the expenses to be paid?

I would suggest that if it is practicable, these patients should be taken to the counties of which they are residents, and there be taken before the insanity board. If this is not practicable, then they should be taken before the insanity board of Stutsman County and the expense of such commission should be borne by the counties of the residence of such patients.

If the legal residence of such patients cannot be determined, then it would be an expense of the state and payable out of any fund under the control of the board of administration available for such purpose.

Yours very truly,  
NELS G. JOHNSON  
Attorney General  
By P. O. SATHRE  
Assistant Attorney General

POS:mg