

STATE OF SOUTH DAKOTA  
OFFICE OF  
THE ATTORNEY GENERAL

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OFFICIAL OPINION NO. 67-68 pg. 480

**Political Parties. Who makes up the County Central Committee? Who participates in County Party Organization and other political meetings? Who fills vacancies in political nominations for county and joint legislative districts?**

You have advised that because of the interest in the 1968 political campaign that your office has received many requests for information on the subject of the County Central Committees, and filling vacancies in nominations by political parties.

You have advised that most of such questions concern themselves with SDC 16.0241, as amended by Section 6 of Chapter 107 of the Session Laws of 1963, and SDC 16.0243.

The questions you have submitted are as follows:

1. Who makes up the County Central Committee for a political party?
2. Are delegates to the state convention entitled to participate in the county political organization?
3. Would County Commissioners whose term of office does not expire during the particular political year be entitled to participate in the county political organization?
4. In what political affairs may the candidates for public office in the county participate?
5. In case there is a vacancy in nomination for a county office, who selects the person to fill such vacancy on behalf of a political party?
6. In case of a vacancy in nomination for a nominee to a joint legislative district, who selects the person to fill such vacancy on behalf of a political party?
7. What procedure is to be followed in making the selections of the person to fill a vacancy as set forth in questions 5 and

QUESTION 1

SDC 16.0241, as last amended by Sec. 6, Chapter 107, Laws of 1963, solves this problem. The difficulty that arises from the language of the statute is a failure to distinguish between the county political organization which is broader than the County Central Committee. As I said in my opinion reported in 1963-64 AGR 379, in answer to the direct question: "Who comprises the County Central Committee,"

"The composition of the County Central Committee comprises the precinct committeemen and precinct committeewomen elected at the primary election."

This is as is provided in the first sentence of SDC 16.0241, as amended. (See also 1930-32 AGR 190 which infers the same conclusion.)

#### QUESTION 2 and 3

These two questions may be answered together and the answer to each is in the NEGATIVE.

The incumbent County Commissioners and the delegates elected to the state convention, as such, are not members of the County Central Committee. By the statute (SDC 16.0241, as amended) the county political organization consists of the County Central Committee,

"together with the nominated candidates of their party, (who) shall meet at the county seat of their county at eight o'clock p.m. on the last Tuesday in June following the primary election, and proceed to form their party organization. . . ."

As my predecessor said in 1929-30 AGR 169, and 1947-48 AGR 293, delegates to the state convention are "elected" at the primary. They are not nominated candidates." Such delegates are not authorized to participate in the county political organization. Likewise, an incumbent County Commissioner whose term will not expire during such election year, is not a nominated candidate during that year, he is an "elected candidate." He is not legally authorized to participate in the county political organization.

#### QUESTION 4

In forming the county party organization, under SDC 16.0241, as amended, the County Central Committee together with the elected candidates form the county party organization. The election of the county chairman and vice chairman, secretary and treasurer, and the state committeeman and state committeewoman is performed by the Central Committee and the nominated candidates. (Incidentally, in 1941-42 AGR 398, it was held that a candidate could be elected to be an officer of such county party organization. I might add that it is my opinion that subject to the six limitations placed in the statute itself, any resident of the county could be so elected to the county party organization.)

The statute also provides that in filling vacancies in the County Central Committee, or of an officer of such party organization, only the "County Central Committee" has authority to act. Thus in this area, the nominated candidates cannot act.

We can appreciate that during a political campaign many questions of strategy may arise. It is my opinion that SDC 16.0241, in providing for one specific date for meeting didn't intend to limit the county political organization from meeting on different occasions on the call of its county chairman. In these meetings, it is my opinion that the County Central Committee and the nominated candidates have authority to determine the course of action to be taken in the county political campaign.

## QUESTIONS 5 and 6

These questions may be considered together, as the answer to each lies in SDC 16.0243. This statute provides for filling vacancies in nomination by political parties throughout the entire slate of nominees for political office.

The statute insofar as it is applicable to a vacancy in nomination for a county office, provides the vacancy, under the proper conditions, may be filled by the party County Central Committee of the county in which such vacancy occurs. Likewise, when the vacancy is in nomination for a joint legislative district, if the statutory conditions are present, it is filled by the party County Central Committees of each of the counties comprising the joint legislative district.

As I have previously advised, the party County Central Committee is limited to the precinct committeemen and committeewomen of such affected county, in case of a county office. It must follow in the joint legislative district it is these committeemen and committeewomen of all affected counties.

It is this group - the County Central Committee or Committees of the particular political party that have the exclusive authority to fill such vacancy. see 1933-34 AGR 309.

## QUESTION 7

It is axiomatic in our political policy, that "proxy" voting, unless authorized by statute, is not permitted. It is my opinion that initially whether a meeting is called to fill a vacancy in party nomination for either a county office or a joint legislative district, that only the County Central Committee members that appear and participate in selection to fill the vacancy can vote on the proposition, and no vote can be cast either as a proxy or agent of any committee member not present.

While there may be many theories advanced as to the proper method of proceeding to select a person to fill a vacancy in nomination, to discuss and analyze the merits thereof would be academic, for the reason that the statute itself (SDC 16.0243) provides the exclusive method of determining the person to fill a vacancy in nomination either for a county office or a joint legislative district office. Said statute, in part, provides:

"Vacancies filled by state committeemen shall be by unit representation, each committeeman casting the number of votes cast in his county as the last general election for his party's candidate for Governor; all other vacancies shall be filled by a majority vote of the committeemen."

The selection to fill a vacancy in either county office, or for a joint legislative district, is not a function of the State committeemen. This is a function solely entrusted either to the Party County Central Committee, in case of a county nominee for office, or all of the County Central Committees of the counties in a joint legislative district.

In making such selection each County Central Committeeman present at such meeting has but a single vote to determine who should fill such vacancy. None has the right to cast a vote for an absent committeeman. A majority of the votes of those present at such meeting—be it a county meeting, or a joint legislative district meeting—determines who shall be certified as the person to fill such vacancy, and be the party nominee for the political office in question.