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MEMORANDUM

TO: Secretary Michael Howe
FROM: Office of the Attorney General
RE: District 25 Vacancy
DATE: June 20, 2025

Due to the untimely death of Rep. Cynthia Schreiber-Beck, from District 25, there is a vacancy that must be filled in the legislative assembly. The vacancy must be filled according to N.D.C.C. § 44-02-03.1, which provides the following process:

1. Absent circumstances¹ that are inapplicable to the current situation, the Secretary of State notifies the Chairman of Legislative Management of the vacancy;
2. The Chairman of Legislative Management notifies the district committee of the political party that the former member represented of the vacancy;
3. The district committee "shall hold" a meeting within 21 days of receipt of the notification to select an individual to fill the vacant seat;
4. If the 21-day period lapses without the district committee making the appointment, the Chairman of Legislative Management "shall appoint" a resident of the district to fill the vacant seat; and
5. Upon notification of an appointment by the district committee or the Chairman of Legislative Management, the Secretary of State shall issue the certificate of appointment and oath of office.

Therefore, the duty to fill the vacancy belongs to the district committee or the Chairman of Legislative Management.

¹ If a legislator resigns under N.D.C.C. § 44-02-02, the statute does not require step 1.

The Secretary of State has two duties under N.D.C.C. § 44-02-03.1: to notify the Chairman of Legislative Management of the vacancy² and to issue a certificate of appointment and oath of office for the appointee to complete and file with your office.³ In order to issue the certificate, you must receive notification from the district committee or the Chairman of Legislative Management that an individual has been appropriately appointed.⁴

Your question involves whether you may accept a letter from an individual purporting to be the District 25 committee chairman as notification of an appointment.⁵ However, you have received a letter⁶ from the NDGOP Chairman informing you that District 25 did not complete a valid reorganization by the statutorily imposed May 15, 2025, deadline.⁷ Additionally, you are aware that there are competing claims to the committee offices of District 25. The status of District 25 is therefore legally undecided, and the District does not have a duly elected district chairman.

The law does not provide your office with the authority to advise either District 25 or the NDGOP State Committee to investigate or resolve the competing claims. Rather, N.D.C.C. § 16.1-03-07 provides direction for local political committees and the state political committee regarding the processes available to organize District 25. As a result, until that occurs, a legally effective appointment by the district committee cannot be made.

² N.D.C.C. § 44-02-03.1(1).

³ N.D.C.C. § 44-02-03.1(7).

⁴ Id.

⁵ Letter from Ann B. Smith to Senator David Hogue and Secretary of State Michael Howe, June 18, 2025.

⁶ Letter from NDGOP State Party Chairman, Matthew Simon to Secretary of State, Michael Howe, June 20, 2025.

⁷ N.D.C.C. § 16-03-07.

Moreover, given the information you have at this time, there is a valid concern that any notification of the vacancy provided by the Chairman of Legislative Management to one of the claimants to the district committee chairmanship was not effective. Accordingly, the 21-day timeframe for the district committee to select an individual to fill the vacancy has not commenced. The duties of your office under N.D.C.C. § 44-02-.3.1 therefore have not been triggered.

Given the state of District 25 and the information provided by the NDGOP State Committee, there is no lawful appointee yet for the legislative vacancy. The burden to validate an appointment is with the relevant political party, in this instance the NDGOP, or District 25 if there is a successful reorganization. If the notice to District 25 validly occurs and the 21-day period expires without an appointment, then you could lawfully accept an appointment of a new legislator from the Chairman of Legislative Management.