

**LETTER OPINION
2015-L-08**

December 10, 2015

Mr. Richard J. Riha
Burleigh County State's Attorney
514 East Thayer Avenue
Bismarck, ND 58501

Dear Mr. Riha:

Thank you for your letter requesting my opinion on whether a driver's license qualifies as a valid form of voter identification if the Department of Transportation (DOT) has accepted a change of address for the license holder but the license card does not reflect the updated address for the licensee. You also ask whether a voter who has updated a residential address online through the Department of Transportation but who has not obtained a substitute license may vote in the new precinct. For the following reasons, it is my opinion that based on a plain reading of N.D.C.C. § 16.1-05-07, a noncommercial driver's license is valid form of voter identification if the voter has properly reported a new residential address to the DOT, even though the license does not reflect the updated address. It is my further opinion that a voter who has updated his or her residential address online with the Department of Transportation may vote in the new precinct if that updated information is contained in the state's central voter file, or in a poll book derived from the central voter file, and the voter indicates that he or she has resided in the new precinct at least thirty days prior to the election.¹

¹ The central voter file is explained in N.D.C.C. § 16.1-02-01:

A permanent, centralized electronic database of voters, to be known as the central voter file, is established with the offices of the secretary of state and county auditors linked together by a centralized statewide system. The county auditor is chief custodian of the central voter file records in each county. The secretary of state shall maintain the central voter file. The central voter file must be accessible by the secretary of state and all county auditors for purposes of preventing and determining voter fraud, making changes and updates, and generating information, including pollbooks, reports, inquiries, forms, and voter lists.

(Emphasis added.)

ANALYSIS

House Bill No. 1333 was passed by the 64th Legislative Assembly. That bill, in part, amended N.D.C.C. § 16.1-05-07, setting out the forms of identification that a voter may use in order to establish a valid identification for voting. Your first question relates to the meaning of the phrase “current driver’s license,” contained in N.D.C.C. § 16.1-05-07(1)(a). The word “current” was added in House Bill No. 1333. You note that the word “current” most likely pertains to whether a driver’s license is expired; but you also question what it means in the context of identification for purposes of voting, particularly in situations in which the licensee has notified the Department of Transportation of a new residential address but has not obtained a substitute license containing the new address.

Words are to be understood in their ordinary sense unless a contrary intention plainly appears.² Further, words and phrases are to be construed in the context and rules of grammar and approved usage of language. Technical words and phrases or defined terms must be construed to such peculiar and appropriate meaning or definition.³ The term “current” is not a technical word or phrase, nor is it a term of art or defined by statute.⁴ “The word ‘current’, when used as an adjective, has many meanings, and [the] definition depends largely on [the] word which it modifies, or subject-matter with which it is associated.”⁵ The term “current” has been variously defined as “present existence” or “belonging to the time actually passing.”⁶ Consequently, a “current driver’s license” would be a license that presently exists.

State law provides several methods for changing addresses on driver’s licenses:

39-06-20. Notice of change of address or name. If an individual after applying for or receiving an operator’s license moves from the address named in the application or on the license or if the name of a licensee is changed by marriage or otherwise, that individual within ten days after moving or the name change shall notify the director in writing or in person of that individual’s old and new addresses or of the individual’s former and new names and of the number of any operator’s license then held by that person. An individual may obtain a corrected operator’s license by making an application as provided for in section 39-06-18. The department may change the address based on information received from

² N.D.C.C. § 1-02-02.

³ N.D.C.C. § 1-02-03.

⁴ Id.

⁵ Black’s Law Dictionary 382 (6th ed. 1990).

⁶ Id.

any authorized address correction service of the United States postal service. The department may also develop procedures for receiving notification of address changes by telephone or electronic means.⁷

When a driver changes his or her address through the online DOT system, the DOT will update the driver record with the new address but does not automatically issue a new driver's license.⁸ A noncommercial driver is not required by statute to obtain a new license displaying the most recent residential information. It is reasonable to consider the license in the possession of the driver as current after the driver's address has been updated with the DOT.⁹

It is, therefore, my opinion that, based on a plain reading of N.D.C.C. § 16.1-05-07, a voter's noncommercial driver's license is current if the licensee has properly reported a new residential address to the DOT, even if the licensee did not take the additional step of obtaining a substitute license card.

You also ask whether voters who update their residential addresses online through the DOT but do not obtain a new license may vote in their new precinct if the updated information is contained in the state's central voter file or in a poll book derived from the central voter file. As noted above, the DOT provides a process for updating its driver's license residential address information online but does not require noncommercial drivers to obtain a new substitute license containing the most current information. The information on the DOT system is provided to the central voter file.¹⁰ The Secretary of State's office has indicated that, in an effort to make the central voter file more up to date, the DOT will be providing updated residential information to the Secretary of State for inclusion in the central voter file nightly rather than weekly.¹¹ Thus, in response to your second question, it is my opinion that if the updated residential information is available to the local election officials, then an unexpired driver's license, together with the information available in the central voter file and a statement by the voter that he or she has resided in the new

⁷ N.D.C.C. § 39-06-20 (emphasis added).

⁸ See <http://www.dot.nd.gov/divisions/driverslicense/addnamechange.htm>. See also N.D.C.C. § 1-02-39(6). Since the DOT is the administrative agency which administers the driver's license provisions in state law, its interpretation of that law is entitled to deference.

⁹ See N.D.C.C. § 39-06-18. See N.D.C.C. § 39-06-49 (fees for substitute license).

¹⁰ See N.D.C.C. § 16.1-02-09(1).

¹¹ See Discussion Material from Deputy Sec'y of State Jim Silrum to county auditors, summer conference, 2015.

LETTER OPINION 2015-L-08
December 10, 2015
Page 4

precinct for at least thirty days prior to the election,¹² is sufficient to demonstrate residency in the new precinct in order to vote in an election.¹³

Sincerely,

Wayne Stenehjem
Attorney General

jjf

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹⁴

¹² See N.D.C.C. § 16.1-01-04.

¹³ See, e.g., Email from Deputy Sec'y of State Jim Silrum to Rep. Kasper, et al. (Apr. 8, 2015, 6:22 PM); Email from Sen. Nicole Poolman to Deputy Sec'y of State Jim Silrum, et al. (Apr. 9, 2015, 8:08 AM) (regarding Senate amendments to H.B. No. 1333).

¹⁴ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).