

**LETTER OPINION  
2013-L-03**

June 13, 2013

Ms. Kimberly J. Radermacher  
LaMoure County State's Attorney  
PO Box 597  
LaMoure, ND 58458-0597

Dear Ms. Radermacher:

Thank you for your letter requesting my opinion on the effective date of House Bill No. 1302 passed by the 63rd Legislative Assembly. The effective dates for legislative bills are governed by N.D. Const. art. IV, § 13 and N.D.C.C. § 1-02-42, and generally, bills containing appropriations are effective on July 1 after the session while bills without appropriations are effective August 1. House Bill No. 1302 primarily amended the law relating to the 24/7 Sobriety Program and provisions relating to driving while under the influence. However, of the 26 sections of House Bill No. 1302, only two of them appropriate money (to the Department of Human Services for the purposes of funding the underage drinking prevention program and to the Office of Attorney General for the purpose of purchasing remote alcohol monitors for individuals in the 24/7 Sobriety Program).

Based on a plain reading of N.D. Const. art. IV, § 13 and N.D.C.C. § 1-02-42, it is my opinion that all sections of House Bill No. 1302 will become effective on July 1, 2013.

**ANALYSIS**

House Bill No. 1302 ("H.B. 1302") contains a number of provisions relating to the 24/7 Sobriety Program and to the offense of driving while under the influence.<sup>1</sup> It also establishes an underage drinking prevention program and provides for consideration of a legislative management study on administrative procedures for driving under the influence of alcohol and drugs. The bill also contains a \$360,000 appropriation to the Department of Human Services for the purpose of funding the underage drinking prevention program<sup>2</sup> as well as a \$1,200,000 appropriation to the Attorney General for the purpose of purchasing

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<sup>1</sup> H.B. 1302, 2013 N.D. Leg.

<sup>2</sup> H.B. 1302, § 25.

remote alcohol monitors for individuals in the 24/7 Sobriety Program.<sup>3</sup> Because only two of the 26 sections contained in H.B. 1302 relate to appropriations, you question whether the effective date of this bill would be the regular effective date for appropriation bills, i.e., July 1, 2013, or the regular effective date for non-appropriation bills, i.e., August 1, 2013. H.B. 1302 does not contain an emergency clause nor does it contain any tax measures which might otherwise have a bearing on the effective date of the bill.

N.D. Const. art. IV, § 13, provides in part that “[e]very appropriation measure for support and maintenance of state departments and institutions . . . take[s] effect on July first after its filing with the secretary of state or on a subsequent date if specified in the law . . . .”<sup>4</sup> Otherwise, with exceptions that are not applicable here, a bill will become effective on August 1.<sup>5</sup> This constitutional provision also states that the “legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution.”<sup>6</sup>

The Legislature has enacted a statute to further refine the rules for determining the effective date of legislation as set out in N.D. Const. art. IV, § 13. Section 1-02-42, N.D.C.C., provides in part as follows:

**Effective dates of legislation - Rules of construction.** In determining the effective date of any law enacted by the legislative assembly, a “measure” includes the entire contents of a legislative act, unless the legislative assembly specifically provides within the act that only a portion of the act is an emergency, appropriation, or tax measure. Unless a different date is specified in a measure, the measure takes effect on July first after its filing with the secretary of state if:

1. Any portion of the measure provides an appropriation for support and maintenance of state departments and institutions; . . .<sup>7</sup>

In this instance, the “measure” would include the entire contents of H.B. 1302 since the Legislative Assembly did not provide that only a portion of the act is an emergency, appropriation, or tax measure, nor did H.B. 1302 specify a different date for taking effect.<sup>8</sup> Thus, under the provisions of the statute, the entire H.B. 1302 takes effect on July first after its filing with the Secretary of State since a portion of the measure, i.e.,

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<sup>3</sup> H.B. 1302, § 26.

<sup>4</sup> N.D. Const. art. IV, § 13.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> N.D.C.C. § 1-02-42.

<sup>8</sup> Id.

sections 25 and 26 of H.B. 1302, provides an appropriation for the support and maintenance of the Department of Human Services and the Office of Attorney General.<sup>9</sup>

It could be questioned whether H.B. 1302 is an appropriation measure for the support and maintenance of state departments and institutions. Similar but slightly different language appears both in N.D. Const. art. IV, § 13 and N.D.C.C. § 1-02-42. The constitutional provision refers to an “appropriation measure for support and maintenance of state departments and institutions” but the statutory provision refers to “an appropriation for support and maintenance of state departments and institutions.”<sup>10</sup>

The North Dakota Supreme Court has provided guidance for interpreting constitutional provisions:

The sole object sought in construing a constitutional provision is to ascertain and give effect to the intention and purpose of the framers and of the people who adopted it, and all rules of construction are subservient to and intended to effectuate such objects. Primarily such intention and purpose are to be found in and deduced from the language of the Constitution itself but, if the language is ambiguous or the answer doubtful, them [sic] the field of inquiry is widened and the rules applicable to the construction of statutes are to be resorted to, and the court may look to the history of the times and examine the state of being existing when the question was framed and adopted by the people in order to ascertain the prior law, the mischief, and the remedy.<sup>11</sup>

An appropriation has been defined by the North Dakota Supreme Court as follows:

An ‘appropriation’ is the ‘setting apart from the public revenue of a definite sum of money for the specified object in such a manner that the officials of

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<sup>9</sup> N.D.C.C. § 1-02-42.

<sup>10</sup> Similar language also appears in N.D. Const. art. III, § 5 relating to suspension of operation of a measure enacted by the Legislative Assembly that is being referred by the people. That section provides that “[t]he submission of a petition shall suspend the operation of any measure enacted by the legislative assembly except emergency measures and appropriation measures for the support and maintenance of state departments and institutions.” I found no North Dakota cases or opinions of this office further explaining this language.

<sup>11</sup> Newman v. Hjelle, 133 N.W.2d 549, 551 (N.D. 1965) (syllabus by the court, emphasis added).

the government are authorized to use the amount so set apart, and no more, for that object.<sup>12</sup>

Applying this definition to H.B. 1302, section 25 is an appropriation in that it sets aside a definite sum of money, i.e., \$360,000, in such a manner that the officials of the Department of Human Services are authorized to use the amount so set apart and no more for the object of funding the underage drinking prevention program provided in section 24 of H.B. 1302. Likewise, section 26 of H.B. 1302 similarly meets the definition in that it sets apart from the public revenue a definite sum of \$1,200,000 for the purpose of purchasing remote alcohol monitors by the Office of Attorney General and to use that amount so set apart and no more for that object.<sup>13</sup>

Applying the plain meaning of the remainder of the unambiguous terms in the phrase in question, as I must do,<sup>14</sup> the ordinary sense of “support” is “[t]o provide for or maintain, by supplying with money or necessities.”<sup>15</sup> Similarly, the term “maintain” means “[t]o provide for”<sup>16</sup> and “maintenance” means “[a] means of maintaining or supporting.”<sup>17</sup> The term “department” means “[a] distinct, usually specialized division of a large organization, such as a government or business.”<sup>18</sup> And finally, the term “institution” has been defined as “[a]n established organization or foundation, esp. one dedicated to public service . . . .”<sup>19</sup>

By appropriating \$360,000 to the Department of Human Services in section 25 of H.B. 1302 for the purpose of funding the underage drinking prevention program, the Legislature is supplying money to support or provide for a program administered by a specialized division of state government.<sup>20</sup> Likewise, by appropriating \$1,200,000 to the Office of Attorney General in section 26 of H.B. 1302, the Legislature is supplying money or necessities to a specialized division of state government to provide for or support the 24/7 Sobriety Program by the Attorney General.

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<sup>12</sup> Billey v. North Dakota Stockmen’s Ass’n, 579 N.W.2d 171, 176 (N.D. 1998) (quoting State ex rel. Link v. Olson, 286 N.W.2d 262, 268 (N.D. 1979)).

<sup>13</sup> Billey v. North Dakota Stockmen’s Ass’n, 579 N.W.2d 171, 176 (N.D. 1998).

<sup>14</sup> See N.D.C.C. § 1-02-02 (words used in any statute are to be understood in their ordinary sense).

<sup>15</sup> The American Heritage Dictionary 1222 (2d coll. ed. 1991).

<sup>16</sup> The American Heritage Dictionary 757 (2d coll. ed. 1991).

<sup>17</sup> Id.

<sup>18</sup> The American Heritage Dictionary 382 (2d coll. ed. 1991).

<sup>19</sup> The American Heritage Dictionary 666 (2d coll. ed. 1991).

<sup>20</sup> Sections 25 and 26, H.B. 1302.

I have found no North Dakota Supreme Court cases construing the phrases in question; however, other courts have indicated that support of state government implies and embraces all necessary provisions for salaries, costs, and expenses, and that support clearly includes financial support of government through appropriation bills.<sup>21</sup> The word “support” is meant in its fullest sense, including appropriations for current expenses, maintenance, upkeep, continuation of existing functions, and appropriations for new buildings and conveniences to meet the needs and requirements of the state.<sup>22</sup>

Therefore, it is my opinion that the appropriations in section 25 and 26 of H.B. 1302 provide for support and maintenance of state departments and institutions. It is my further opinion that the entire measure takes effect on July 1, 2013, pursuant to N.D.C.C. § 1-02-42 because sections 25 and 26 of the measure provide an appropriation for support and maintenance of state departments.

Sincerely,

Wayne Stenehjem  
Attorney General

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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.<sup>23</sup>

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<sup>21</sup> Warner v. White, 4 P.2d 1000, 1004 (Ariz. 1931). Cf. Garvey v. Trew, 170 P.2d 845, 848 (Ariz. 1946) (“Patently, the test of whether the appropriation is for the support and maintenance is not the earmarking for a specific purpose, but rather are the funds appropriated for use in carrying out the objects and functions of the department.”).

<sup>22</sup> State ex rel. Blakeslee v. Clausen, 148 P. 28, 31-32 (Wash. 1915).

<sup>23</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).