

**LETTER OPINION
2019-L-08**

October 22, 2019

The Honorable David Rust
State Senator
PO Box 1198
Tioga, ND 58852-1198

The Honorable Dan Ruby
State Representative
4620 46th Avenue NW
Minot, ND 58703-8710

Dear Senator Rust and Representative Ruby:

Thank you for your letter requesting my opinion on whether Measure No. 4, which was approved by a vote of the people during the 2018 general election, was intended to provide free registration as well as a free set of license plates for one vehicle of a volunteer responder.

For the reasons indicated below, it is my opinion that the plain language of Measure No. 4 requires the Department of Transportation to provide one free set of special license plates for one vehicle of an eligible volunteer responder, and that, in order to provide the plates for free, the annual registration fee for one vehicle is waived.

ANALYSIS

Initiated Measure No. 4 was approved during the November 6, 2018, election, becoming effective December 6, 2018, and provides:

Special vehicle license plates for volunteer emergency responders.

Upon application, the director shall issue red personalized plates to volunteer emergency responders at no initial or annual cost to the volunteers. Volunteers shall include fire fighters and emergency medical responders. Qualified applicants are eligible to receive one set of plates.

Plates may not be displayed on a vehicle with a registered gross weight exceeding 20,000 pounds. The first three digits of the plates are the last three digits of the zip code where the volunteer's department is located. The remaining space may contain up to three characters of the volunteer's choosing. This plate serves as an entrance pass to all North Dakota state parks. In cooperation with the volunteer organizations, the director shall designate qualifications and verification procedures for the plates issued under this section.¹

The language of the measure does not include or reference the vehicle's "registration." However, you explain in your letter that the Department of Transportation (DOT) waives the registration fees for eligible applicants reasoning that because the cost of general plates are included in the registration fee, if this fee is not waived, eligible applicants would not receive free plates as required by the measure. You further explain that the Legislature, during the 2019 legislative session, debated whether the DOT's interpretation that the intent of Measure No. 4 was to provide free plates and free registration in perpetuity. Ultimately, the Legislature left the language of the measure largely intact and decided to ask for this opinion.²

The plain language of Measure No. 4 and the statute provide that the "red personalized plates" are to be provided "at no initial or annual cost to the volunteers" and that "[q]ualified applicants are eligible to receive one set of plates." The DOT explained in testimony to the Legislature that for standard North Dakota license plates, there is no separate cost for the general license plates because the fee for the plates is included in the payment of the registration fee for a vehicle.³

"Generally, the language of an initiated measure is interpreted and understood in its ordinary sense."⁴ The basic rules of statutory construction apply with equal force to legislation enacted by the people through the initiative process or by referendum.⁵ In construing the words of an initiated measure, as in a statute enacted by the Legislature, the primary rule is that of "'common understanding' of the words employed in the initiated measure."⁶ The objective is to determine the probable intent of the voters who pass the measure. The best evidence of that intent is the text and context of the measure itself,

¹ Section 1, Initiated Measure No. 4 (Nov. 2018).

² See S.B. 2321, 2001 N.D. Leg. amending N.D.C.C. § 39-04-10.16.

³ *Hearing on S.B. 2321 Before the Senate Transp. Comm.*, 2019 N.D. Leg. (Apr. 15) (Statement of Lindi Michlitsch); see also N.D.C.C. § 39-04-19.

⁴ N.D.A.G. 2012-L-03; N.D.A.G. 2011-L-10; N.D.A.G. 2004-L-59.

⁵ N.D.A.G. 2011-L-10; N.D.A.G. 2004-L-59 (citing 42 Am. Jur. 2d *Initiative and Referendum* § 49 (2d ed. 2000)).

⁶ N.D.A.G. 2004-L-59.

interpreted not upon narrow technical principles, but upon broad general lines, in order that the object intended may be accomplished.⁷

In the case of initiated measures, statutory rules of construction permit the use of extraneous sources when the measure is ambiguous or unclear. There is no “legislative history” when a measure is put on the ballot by an initiated petition, however there are other sources which substitute for legislative history. For example, the North Dakota Supreme Court has considered newspaper articles in its interpretation of constitutional provisions.⁸ In determining the intent of legislation a court may consider, among other things, the “object sought to be attained”; the “circumstances under which the [measure] was enacted”; and the “legislative history.”⁹

Newspaper articles regarding Measure No. 4 prior to the election indicate that the initiative would “provide free, specialized license plates for volunteer firefighters and other emergency responders” and that the “free license plates...also means that vehicle registration will be free.”¹⁰ The DOT, in its estimate of the cost of the measure as required by N.D.C.C. § 16.1-01-17, projected that the state would lose \$3.5 million in revenue every two years, which was based on lost registration fee revenue.¹¹ This cost projection was provided to the media, the Legislature, and citizens, and was discussed in media coverage before the election.¹² Prior to the election, the DOT made it clear that the plates would be provided for free by waiving the registration fee.¹³ Thus, based upon the media coverage of the measure and information provided by the DOT, it is reasonable to assume that voters understood the plates were free and included waived registration fees.

⁷ *Id.*

⁸ N.D.A.G. 87-3 (citing *e.g.*, *State ex rel. Sanstead v. Freed*, 251 N.W.2d 898 (N.D. 1977)).

⁹ N.D.C.C. § 1-02-39.

¹⁰ Frank Stanko, *Retired ND farmer seeks license plates for emergency responders*, Wahpeton Daily News, Mar. 23, 2018, <http://wahpetondailynews.com>; John Salling, *Measure 4 offers free license plates, registration for volunteer emergency responders*, Kfyrtv.com, Oct. 24, 2018, <http://kfyrtv.com>.

¹¹ Report of N.D. Legislative Council (Sept. 12, 2018), submitted to N.D. Sec’y of State; Letter from Lindi Michlitsch, Dir., Motor Vehicle Division, to Legislative Mgmt. Comm. (Sept. 12, 2018).

¹² Emma Vatnsdal, *ND Measure 4 created to thank emergency responders*, Prairie Bus. Magazine, Oct. 23, 2019, <http://www.prairiebusinessmagazine.com/government-and-politics/4519033-nd-measure-4-created-thank-emergency-responders>.

¹³ Report of N.D. Legislative Council (Sept. 12, 2018), submitted to N.D. Sec’y of State; Letter from Lindi Michlitsch, Dir., Motor Vehicle Division, to Legislative Mgmt. Comm. (Sept. 12, 2018).

There are several special plates available in North Dakota¹⁴ but the statutes providing for those plates all include language that requires payment of the vehicle registration in addition to the fee for the special plate, while the initiated measure does not include similar language. The plain language of the initiated measure did not include the terms “registration fees.” Any change to the language in the approved measure may not occur for seven years, except with a two-thirds vote of the members of each house, after which the measure may be amended upon a majority vote.¹⁵

Therefore, it is my opinion that the voters were aware that the costs associated with Measure No. 4 were based upon waived registration fees when they approved it.

Sincerely,

Wayne Stenehjem
Attorney General

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.¹⁶

¹⁴ N.D.C.C. § 39-04-10.8 (National Guard member’s payment of registration and \$5); N.D.C.C. § 39-04-10.10 (North Dakota veteran’s payment of registration fees and \$15); N.D.C.C. § 39-04-10.11 (Firefighter’s Association payment of registration fees and \$15); N.D.C.C. § 39-04-10.13 (other public or nonprofit organization plates other fees required for registration must be paid in addition to \$25).

¹⁵ N.D.C.C. Const. Art. 3, § 8.

¹⁶ See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).