

OPINION
65-133

June 4, 1965 (OPINION)

The Honorable K. O. Nygaard

Commissioner of Insurance

RE: Insurance - Public Buildings - Reinsurance

This is in response to your letter in which you ask for an opinion on the provisions of Senate Bill No. 340 adopted by the Thirty-ninth Legislative Assembly, which amends and reenacts section 26-24-22 of the North Dakota Century Code.

The Act pertains to the procedure of reinsurance through bids in the month of June of odd numbered years. The amendments to section 26-42-44 are both substantive and procedural. It could well be that the procedural portion could be put into effect without any legal difficulty. However, as to the substantive matter, a more serious question arises.

Under the provisions of section 26-24-22, before the amendment, the Commissioner of Insurance was directed to secure reinsurance for certain risks, the premium for which was borne by the buildings or institutions reinsured. The present Act provides that the premium for reinsurance be paid out of general premium collections. In addition to this, the amended version does not limit the reinsurance to certain institutions or enterprises, but applies to losses in excess of \$500,000.00. It, in effect, is a \$500,000.00 deductible reinsurance program without limitation to any specific institution or enterprise.

Senate Bill No. 340 does not contain an emergency clause. You then inquire and ask for an opinion whether or not the reinsurance, which is to be advertised for bids beginning with the second Monday in June on each odd numbered year, is to be under the old law or the new Act. The bids received would be examined on the last Monday in June and would be awarded on the same day. The contract actually is for a two-year period beginning with the first day of August.

Under the North Dakota constitutional provisions, it is found that all measures will go into effect on July first following the Legislative Session, except in such instances where the effective date is set at a date later than July first or in instances where the act is declared an emergency and is passed by two-thirds of the members of the Legislature. The Act in question is not an emergency measure, and while it was approved on March 17, 1965, and is considered to be the law, nevertheless it will not become effective or operative until July 1, 1965.

It is also observed that the contracts involved would be entered into prior to July 1, 1965, even though the substantive matter pertains to subsequent dates. Rules of law have been announced by the courts,

not necessarily under the same factual circumstances as we have here, which hold that no rights may be acquired under an act until the act has become effective. The same rules of law have indicated that no person is bound to regulate or conduct a business in compliance with an act until the act has become effective. Similarly, the courts have held that acts purporting to have been done prior to the effective date of a statute are void.

Even though the reinsurance obtained would be by contract, and it could be argued that the person entering into the contract could not avoid its specific provisions, nevertheless, where the act is the result of a statutory provision which was not effective or operative at the time the contract was entered into, it becomes doubtful that such contract would be valid with respect to all parties and subject matter. Because the reinsurance provision involves a substantial sum of money, we do not deem it advisable to venture into an agreement which, on the surface, is doubtful as to its validity. Even though it is unfortunate that the provisions of Senate Bill. No. 340 cannot be employed until two years hence, we do not believe that such would constitute a legal basis for attempting to put into operation its provisions before the constitutional effective date.

It is therefore our opinion that the reinsurance to be secured by the Insurance Commissioner under the provisions of section 26-24-22 must be pursuant to the provisions of said section prior to the amendments contained in Senate Bill No. 340 as passed by the 39th Legislative Assembly.

HELGI JOHANNESON

Attorney General