

LETTER OPINION
71-192

January 18, 1971 (OPINION)

The Honorable Don Halcrow

House of Representatives

Legislative Assembly

State Capitol

RE: Legislature - Compensation - Increase

This is in response to your letter in which you call our attention to House Bill 1144. You then ask:

"Is it proper for legislators to increase their own personal remuneration in light of rule 25 of the joint rules of the 42nd legislative assembly and also in light of section 43 of the State Constitution? A written opinion is hereby requested."

Section 43 of the North Dakota Constitution provides as follows:

"Any member who has a personal or private interest in any measure or bill proposed or pending before the legislative assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon without the consent of the house."

House Rule 25 which has been adopted by the Forty-second Legislative Assembly provides as follows:

"25 VOTE BY MEMBERS. Every member who is present, before the vote is declared from the chair, must vote for or against the question before the House, unless the House excuse him; provided, however, that any member who has a personal or private interest in any measure or bill shall disclose the fact to the House and shall not vote thereon without consent of the House."

We examined the constitutional debates, but found no reference to Section 43. If there is reference to Section 43 in the constitutional debate, it is not obvious. The provisions of this section are designed primarily to prevent a member of the Legislature from advocating or voting for a measure in which he has a special interest.

The interest referred to in Section 43 is not one which is common to the members of the Legislature, but rather an interest which is personal or private - one which is of singular interest to any member or members as distinguished from the members as a whole. Such interest does not refer to the interest resulting only from being a member. This section has also as one of its primary purposes the requirement that a member who has a private or personal interest must

disclose same to the House before he shall be permitted to vote. The objective is to require consent where such an interest exists before the individual member is permitted to vote on a bill.

The provisions of House Bill 1144 naturally affect each member of the Legislature because of the interest, but the interest is no greater to one member than to another and in this respect there is no personal or private interest as contemplated by Section 43.

It is a strong presumption which can be overcome only by compelling, legal reasons that the Legislature will not perform an unconstitutional act. The Legislature has enacted legislation similar to House Bill 1144 on more than one occasion. This, while not being conclusive, is presumptive of the validity of the act.

In *Verry v. Trenbeath*, 148 N.W.2d. 567, a portion of Section 54-03-20 which allowed certain expenses to members of the Legislative Assembly, was challenged. The challenge was on the constitutionality of such provision. If Section 43 would have constituted a prohibition against enacting such legislation, we would have to assume that the challenger, "Verry," would have alleged that in his complaint. The question was not raised whether the act then in question was in violation of Section 43, nor did the court, in disposing of the challenge make any reference to this section.

It should be further noted that Section 43 does not prevent one from voting if consent of the House is obtained. Thus, procedurally, every member could disclose that he has an interest if this were a requirement in this instance and with permission, be permitted to vote. The provisions of this bill per se clearly appraises every member that each member has an interest. Therefore, it would seem that such interest need not be reported. A different legal attitude would prevail if such interest were not as obvious as disclosed in House Bill 1144.

It is therefore our opinion that neither Section 43 nor House Rule 25 would constitute a bar to enact such legislation or to prevent any of its members from voting for or against House Bill 1144. This opinion is confined to the question presented.

HELGI JOHANNESON

Attorney General