

**LETTER OPINION**  
**72-64**

January 6, 1972 (OPINION)

Mr. Dean F. Bard

Executive Director

North Dakota Constitutional Convention

RE: Constitution - Convention - Publication

This is in response to your letter in which you state that a question has arisen concerning the requirements for the publication of the convention's final product prior to the time it will be voted upon by the people. In this respect you call our attention to certain provisions of Chapter 462 of the 1969 Session Laws as amended by Chapter 526 of the 1971 Session Laws. You also call our attention to the last sentence in section 9 of Chapter 526 of the 1969 Session Laws as amended by Chapter 526 of the 1971 Session Laws. You then ask the following questions:

1. Would section 16-01-07 of the North Dakota Century Code which requires the text of constitutional amendments to be published operate to require the publication of the proposals or proposals of the North Dakota Constitutional Convention?
2. If the answer to question number 1 is yes, would the language referred to be broad enough to include the publishing, in addition to the actual language of the constitutional proposals or proposals, of an explanation of what the effect of such proposal or proposals would be and in what way they would differ from the present constitution?"

The pertinent statutory provision pertaining to the questions submitted is part of section 9 of Chapter 462 of the 1969 Session Laws as amended by Chapter 526 of the 1971 Session Laws. It provides as follows:

\* \* \* Thereafter, the finished draft of the proposed Constitution shall be certified by the president and secretary of the convention to the secretary of state, and the secretary of state shall thereafter provide for the publication of the full text thereof in the same manner as provided by law for publication of initiative and referendum measures to be voted upon by the electors of this state. The convention shall expend such funds as may be necessary to publish and distribute a report and related information to the people explaining its proposals."

AS to question number 1, section 16-01-07 of the North Dakota Century Code among other things provides that the complete text of any constitutional amendment, initiated measure, or referred measure shall be published in columns in order to enable the electors to

become familiar with the total text of the proposed constitutional amendment or initiated or referred measure, in addition to the sample ballot listing ballot titles.

In tracing the history and provisions of this section, we are convinced that it was designed to govern constitutional amendments in instances where the Constitution was amended as provided by section 202 of the North Dakota Constitution as distinguished from action taken by a Constitutional Convention. It is also significant to note that the legislature in this instance merely provided for the publication of the proposed text and made no particular reference to any method of explaining the contents.

We might at this time also point out that the last sentence and the penultimate sentence remained identical in language as initially enacted by Chapter 462 even though some of the provisions of section 9 were amended by Chapter 526. The quoted language above remained the same.

The last sentence actually provides for the explanation of the proposal or proposals. In this respect, we note that as to constitutional amendments, section 16-11-07 among other things provides for the manner in which constitutional amendments or measures are to be placed on the ballot, the order of listing, explanation of the vote and for a statement representing the substance of the amendment. In brief, this section provides for the explanation of a constitutional amendment.

The penultimate sentence refers to publication only and specifies the manner in which publication is thereby accomplished, whereas the last sentence pertains to distribution of a report and explaining the proposals of the convention.

Where the Legislature did provide for an independent method of explanation as it did in the last sentence of section 9 of Chapter 462 as amended, we are of the opinion that it did not wish to duplicate but meant to set forth a separate manner in which the proposals are to be explained. This conclusion is reinforced by noting that the Legislature did provide for the publication of the text. Had the Legislature intended to also require the explanation set forth in section 16-11-07, it could have easily so provided by employing appropriate language. But having provided for the explanation as it did in the last sentence, it clearly indicates that the Legislature intended for a separate method in explaining the proposals of the convention.

We are also convinced that section 16-11-07 was designed to govern constitutional amendments proposed under section 202 of the North Dakota Constitution and initiated and referred measures, but not to govern proposals arising out of a Constitutional Convention. We do not believe that the Legislature intended that the explanation be made by the convention itself and another set of explanations made by the Secretary of State with the approval of the Attorney General.

The language "shall expend such funds as may be necessary to publish and distribute a report and related information to the people explaining its proposals" implies that not all of the funds

appropriated need to be expended, but only to expend those funds which are necessary but within the appropriation. This language does not provide for an open end appropriation, but merely authorizes expenditures of the appropriation that are necessary.

In direct response to question number 1, it is our opinion that the proposals of the North Dakota Constitutional Convention are required to be published in the full text as set forth in section 16-01-07.

As to question number 2, the penultimate sentence of section 9 as previously stated addresses itself to the publication which is directed to be accomplished in the same manner as initiative and referendum measures are published under section 16-01-07. No reference is made to any explanatory remarks. The last sentence addresses itself to both publication and a distribution of a report and related information explaining to the people the various proposals. This provision apparently is addressed to the Convention and is not related to the material to be placed on the ballot. If the Legislature would have deemed it advisable to have the explanatory remarks set forth on the ballot as is provided for in section 16-11-07 as is provided for constitutional, initiated and referred measures, it could easily have employed language to indicate this. For example, the publication of the text is couched in such terms to clearly indicate that the publication is to be in the same manner as constitutional amendments, referred measures and initiated measures, whereas the last sentence makes no comparison as to how this is to be accomplished.

Therefore in direct response to question number 2, the method of explaining or providing information of the proposals is a matter which is left in the discretion of the Constitutional Convention, the limit being in funds appropriated to the Constitutional Convention. The explanation of the proposals and the explanation as to how such proposals differ from the original constitution is a matter which comes within the realm of the Constitutional Convention itself.

As to the explanations of the various proposals, it is conceivable that some would involve legal conclusions. We find that this is difficult to avoid. At the same time, we deem it advisable to inform you that the Supreme Court of this state is the ultimate arbiter of any interpretation or construction of the constitution. The courts have in instances given weight to explanations given contemporary with the enactment or adoption of an act. We would further observe that explanations are authorized and for that matter are directed to be made, but caution should be exercised to avoid advocating in the explanation for or against the adoption of a proposal.

HELGI JOHANNESON  
Attorney General