

OPINION
73-477

February 21, 1973 (OPINION)

The Honorable Art Bunker
Speaker of the House of Representatives
North Dakota Legislative Assembly
State Capitol
Bismarck, North Dakota 58501

Dear Representative Bunker:

This is in response to your request for an opinion with reference to the last two sentences of Section 54-06-14 as amended.

Section 54-06-14 was amended by Chapter 378 of the 1965 Session Laws (House Bill No. 913). The bill as introduced was amended by striking everything after the words "a bill" and by substituting in lieu thereof the language that no appears in Section 54-06-14 except for the last two sentences. See House Journal Page 482. As so amended, it was passed and messaged to the Senate. The Senate amended House Bill 913 by adding the following language:

"Provided, however, that neither the annual vacation leave or the sick leave provided herein shall be accumulated for a total period of ninety days in either category."

See Senate Journal Page 606.

The Senate passed House Bill 913 as amended and messaged it back to the House. See Senate Journal Pages 681 and 711. The House refused to concur in the Senate amendments and provided that a conference committee be appointed. See House Journal 1136. The conference committee reported back and recommended that the Senate recede from its amendments and place in lieu thereof the following language:

"Each employee shall be required to take an annual leave, as provided for in this section. The accumulation of sick leave shall be limited to a total of 120 days."

See House Journal Page 1212 and Senate Journal Page 915.

The Senate refused to adopt the conference report and amendments. See Senate Journal Page 915. A new conference committee was appointed. The House likewise appointed a new conference committee. The new conference committee recommended that the Senate recede from its amendments. The conference committee report was adopted by the Senate and it passed House Bill No. 913 as it was initially passed by the House. See Senate Journal Page 945.

The journal entries clearly show that the last two sentences of Section 54-06-04 as amended by Chapter 378 (House Bill 913 of the 1965 Session Laws) were never approved or passed by the Legislature. It is obvious that the inclusion of the last two sentences in the final bill is the result of inadvertence on the part of the persons responsible for the reengrossing and enrolling of the bill.

There is authority which supports both conclusiveness of legislative journals and conclusiveness of the enrolled bill.

On January 18, 1968, in an Opinion to Robert Q. Price, States Attorney of Cavalier County, this office had occasion to consider the question whether the final bill as enrolled and engrossed should prevail where it was not in harmony with the entries in the journals of the House and Senate. In this instance a conflict existed between two provisions passed by the same legislative assembly. In that instance this office gave recognition to the journal entries and concluded that by giving recognition to the journal entries, the conflicts or ambiguities could be resolved. In such opinion this office said:

"We are also aware that in North Dakota where a conflict exists or where the language is ambiguous, resort to the journal may be had for purposes of resolving a conflict or ambiguity."

As to which shall prevail, the enrolled and engrossed bill, or the journal entries, where a conflict exists, 82 C.J.S. Page 144 states that:

"The recitals in legislative journals are conclusive as to matters which the constitution requires to be entered therein, and cannot be impeached by verbal statements or other parol or extrinsic evidence, and the journals furnish controlling evidence when a statute is challenged on the ground that it has not been passed by both houses. In the event of a discrepancy between the published act and the legislative journals as to the form and terms of the statute, the journals have been held to control, and the journals have been held to be controlling in the event of a variance between the enrolled bill and the journals with respect to the title of an act."

Similar discussion is found in 50 AM. Jur. starting on Page 123 through Page 147. The net effect of these discussions is that the various jurisdictions in the different states are inharmonious and conflicting.

But be that as it may, Section 49 of the North Dakota Constitution provides as follows:

"Each house shall keep a journal of its proceedings, and the yeas and nays on any question shall be taken and entered on the journal at the request of one sixth of those present."

We also find in Section 65 of the North Dakota Constitution the following language:

"No bill shall become a law except by a vote of a majority of all the members-elect in each house, nor unless, on its final passage, the vote be taken by yeas and nays, and the names of those voting be entered on the journal."

It can thus be observed that a journal is required to be kept and that the proceedings be recorded in the journal.

The North Dakota Supreme Court in State v. Schultz, 174 N.W. 81, in effect adopted the journal entry rule and rejected the enrolled bill rule. The Court has not had occasion to reject the journal entry rule in this state. The Court had occasion to discuss the rule again in Sorlie v. Steen, 212 N.W. 843. In distinguishing the latter case with the Schultz case, the Court in effect reaffirmed the journal entry rule.

Even as late as 1965, the North Dakota Supreme Court in Rausch v. Nelson, 134 N.W.2d. 519, did not reject the journal entry rule. The Court in effect did examine the journals of the House and Senate to help resolve the question before it.

The authorities seem to be in accord that where the journal entry rule is recognized, resort to the journals may be had to determine whether or not an act was passed in accordance with the Constitution. The same concept would apply to an amendment which is simply a portion of an act. The principle is the same.

As to the instant matter, no formal opinion had been issued by this office, but a member of this office was a member of the Governor's Personnel Policy Committee which developed rules and regulations or policies for establishing uniformity on matters pertaining to annual and sick leave. The policy ultimately adopted disregarded the last two sentences of the section in question. See Pages 2 through 6.

Taking into account the foregoing principles of law and that this state has in effect adopted the journal entry rule, it is our opinion that the last two sentences of Section 54-06-14 were never passed by the North Dakota Legislature and as such these two sentences are not part of said section.

We would further be of the opinion that if the Legislature were so inclined, it could enact legislation which would clearly and definitely delete the last two sentences. In enacting such legislation, it should indicate that this is primarily to eliminate any further confusions by deleting the last two sentences of said section from the Code references.

We are, however, not committing this office to the Journal Entry Rule on appropriation legislation.

Sincerely yours,

ALLEN I. OLSON

Attorney General