

OPINION
75-111

January 29, 1975 (OPINION)

The Honorable Earl S. Strinden
Majority Floor Leader
House of Representatives
Forty-fourth Legislative Assembly
State Capitol Building
Bismarck, ND 58505

Dear Representative Strinden:

This is in reply to your letter of January 29, 1975, relative to House Bill 1042. You state the following facts and questions:

Will you please give us an official opinion on whether House Bill 1042 requires a two-thirds vote for passage by the House of Representatives.

House Bill 1042 would transfer the Grafton State School and the San Haven State Hospital from the Director of Institutions to the Mental Health and Retardation Division of the Health Department. Our Legislative council staff has advised us that this requires a two-thirds vote.

This bill is presently before us for action and we would appreciate your official opinion as quickly as possible.

Before discussing the merits of the question, I would note the policy of this office is, in accordance with Section 54-12-01(8) of the N.D.C.C., "to give written opinions, when requested by either branch of the legislative assembly, upon legal questions." I have felt that compliance with this section during the progress of a Legislative Assembly necessitates a written request from the presiding officer of the House or Senate. Because of your recognized position as majority floor leader and the urgency of the matter we have determined to issue the opinion upon your request.

House Bill 1042 does, among other things, amend Section 54-23-01 of the N.D.C.C. (Section 26 of the bill as amended).

This office on March 11, 1969, addressed a Memo to then Speaker of the House Ernest Johnson, in which the question of whether an amendment of Section 54-23-01 of the N.D.C.C., removing the State Training School from the management, control and supervision of the Board of Administration and placing it under the North Dakota Department of Social Services Board would require a two-thirds vote. A copy of that Memorandum is attached hereto since the rationale of that Memorandum is directly applicable to the question you present. We will not recite the legal discussion contained in the Memorandum in the interest of time. However we did conclude that while the matter was not free from doubt the most current expressions of the North Dakota Supreme Court would indicate the bill requires a two-thirds vote because of the amendment of Section 54-23-01 of the

N.D.C.C. We adhere to that position recognizing that if the matter were presented to the Court, the Court might modify or reverse its former position.

We note that subsequent to the issuance of the Memorandum to Speaker Johnson in 1969 the House voted upon Senate Bill 386 and, while the bill received a majority of the votes in the House, the Speaker declared it lost for want of the two-thirds majority. See pages 1139-1140 of the 1969 House Journal.

I trust this will adequately set forth our position on the question presented.

Sincerely,

ALLEN I. OLSON

Attorney General