

OPINION
76-111

July 22, 1976 (OPINION)

The Honorable Dean Winkjer

State Representative, 1st District

Box 1261

Williston, ND 58801

Dear Representative Winkjer:

This is in reply to your letter of July 19, 1976, relative to an initiated measure to appear on the September Primary Ballot. You state the following facts and questions:

"In the past few weeks there has been a great deal of information out from governmental bodies as it relates to the effect of a proposed initiated measure limiting state general fund spending to \$332,000,000.00 in the coming biennium.

Much of this information has centered about the question as to whether or not this general fund spending limitation would cut the state programs and state agencies now existing.

It seems that there is developing a great deal of concern that the limitation on general fund spending would cut heavily into the foundation payment for schools and thus, if schools were to maintain their quality education as we now know it, that it would require a substantial increase in mill levies on local property.

My question encompasses the supposition that in the event this \$332,000,000.00 initiated statute were placed on the ballot and further in the event of its passage, would the state then be absolutely limited to \$332,000,000.00 in general fund spending or would the State Legislature be authorized under the provisions of Article 2, Section 25 of the North Dakota Constitution with a two-thirds vote of both houses to increase that level of spending as imposed by this proposed initiated measure?"

The measure to which you refer is Initiated Measure No. 1 on the September Primary Ballot. Section 1 thereof specifies that no appropriation of funds from the general fund for operation of the State of North Dakota may exceed the total sum of \$332,000,000.00 during the period set out in Section 2 of the Initiative Petition. Section 2 specifies that the period covered by the act should be the biennial appropriations beginning July 1, 1975 and ending June 30, 1977, and beginning July 1, 1977 and ending June 30, 1979. In an opinion to State Representative Earl Strinden, Grand Forks, North Dakota, dated July 22, 1975, this office indicated we did not believe the initiated measure limiting expenditures to \$332 million would apply to the appropriation measures and governmental activities

during the 1975-1977 biennium despite the statements contained in the initiated measure.

An examination of the Initiative Petition leaves little doubt but that it is filed pursuant to Section 25 of the North Dakota Constitution which reserves to the electorate the power to propose measures (initiative) and to enact or reject the same at the polls and to approve or reject at the polls any measure enacted by the Legislature (referendum). Section 25 of the Constitution also provides in part:

"No measure enacted or approved by a vote of the electorate shall be repealed or amended by the legislature, except upon a yea and nay vote upon roll call of two-thirds of all members elected to each house."

An initiative measure is a legislative enactment as that term is used in a broad sense. It is not a constitutional provision although it is enacted pursuant to a constitutional provision.

It is subject to amendment or repeal by the Legislature as are other legislative enactments with the exception that whereas a measure enacted by the Legislature and not referred to the electorate requires only a simple majority of each house of the Legislature to amend or repeal it, (see Section 65 of the North Dakota Constitution) an initiated measure, by virtue of the provisions of Section 25 of the North Dakota Constitution, quoted above, may be amended or repealed only by a two-thirds vote of all members elected to each house.

In direct reply to your question, it is our opinion that if the initiated measure in question is approved by the electorate the \$332 million in general fund spending would not be an absolute limitation insofar as the State Legislature would be authorized by Section 25 of the North Dakota Constitution to increase (or decrease) that level of spending by amendment or repeal of the initiated measure pursuant to a two-thirds vote of all members elected to each house of the Legislature.

Sincerely,

ALLEN I. OLSON

Attorney General