

**OPINION
79-101**

May 9, 1979 (OPINION)

Honorable James Gerl

State Representative

District 34

411 Seventh Avenue N.W.

Mandan, North Dakota 58554

Dear Representative Gerl:

This is in response to your letter dated May 7, 1979, which states, in part:

. . . . I hereby request a formal Attorney General's opinion on the question of whether House Bill 1138, or portions thereof, may be referred under the North Dakota Constitution without the printing of the entire bill in each petition to be distributed for signatures.

The referendum is governed by the North Dakota Constitution as amended by Section 1, Chapter 613 (House Concurrent Resolution 3088), 1977 Session Laws, as approved by the voters on November 7, 1978, and effective on January 1, 1979, to be codified as Article 105 of the Amendments to the Constitution of the State of North Dakota (hereafter referred to as "Article 105"). Section 1 of Article 105 reserves certain powers to the people, including the referendum:

While the legislative power of this state shall be vested in a legislative assembly consisting of a Senate and a House of Representatives, the people reserve the power to approve or reject legislative acts or parts thereof, by the referendum

Section 2 of Article 105 concerns the text of the referendum petition. Section 2 provides:

A petition to initiate or to refer a measure shall be presented to the secretary of state for approval as to form. A request for approval shall be presented over the names and signatures of twenty-five or more electors as sponsors, one of whom shall be designated as chairman of the sponsoring committee. The secretary of state shall approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and The full text of the measure. >Emphasis added!

Section 3 of Article 105 governs the preparation and filing of copies of the original petition. Section 3 states in part:

No law shall be enacted limiting the number of copies of a

petition. The copies shall become part of the original petition when filed.

These three constitutional provisions clearly indicate that the full text of the measure to be referred must be printed on the petition. Therefore, if House Bill 1138, in its entirety, were to be referred, the entire bill must be printed on the petition and all copies.

A more difficult problem arises, however, if only part of House Bill 1138 is to be referred. Must the entire bill be printed in the petition or may only the referred portion be printed? The key to this question is in the definition of the term "measure".

"Measure" is not defined in Article 105. Further, we cannot locate a definition of the term in the "Debates of the North Dakota Constitutional Convention of 1972" or Committee testimony on H.C.R. 3088. (Article 105 is similar to Alternate Proposition 2A of the proposed constitution adopted by the North Dakota Constitutional Convention of 1972; this proposed constitution was defeated in the special election held April 18, 1972.)

The use of "measure" in Section 5 suggests that it refers to an entire bill:

A referendum petition may be submitted only within ninety days after the filing of the measure with the secretary of state The submission of a petition against one or more items or parts of any measure shall not prevent the remainder from going into effect. >Emphasis added!

As used herein, "measure" clearly means an entire bill. Entire bills (the enrolled originals) are filed with the Secretary of State. Further, Sections or other segments of a bill are considered "items or parts of any measure."

However, at other places within Article 105, the term "measure" appears to have a dual meaning: either the entire bill or parts thereof. For example, Section 1 states that the people may "approve or reject legislative acts, or parts thereof, by the referendum."

Section 2 provides: "A petition to initiate or to refer a measure shall be presented to the secretary of state . . ." >Emphasis added! As used in this context "measure" relates back to the previously mentioned "legislative acts, or parts thereof," i.e., "measure" is a legislative act or a part of a legislative act.

Section 5 provides: "The submission of a petition shall suspend the operation of any measure enacted by the legislative assembly except emergency measures and appropriation measures for the support and maintenance of state departments and institutions." >Emphasis added! Obviously the referral of one Section of a multiSection bill does not suspend the operation of the entire bill. Yet, Section 5 states that the "submission of a petition shall suspend the operation of any measure." >Emphasis added! In this context "measure" refers only to that part or item being referred, not an entire bill.

Section 6 provides:

. . . if the sufficiency of such petition is being reviewed at the time the ballot is prepared, the secretary of state shall place the measure on the ballot and no subsequent decision shall invalidate such measure if it is at such election approved by a majority of the votes cast thereon. >Emphasis added!

Section 7 provides:

All decisions of the secretary of state in the petition process are subject to review by the supreme court in the exercise of original jurisdiction. If his decision is being reviewed at the time the ballot is prepared, he shall place the measure on the ballot and no court action shall invalidate the measure if it is approved at the election by a majority of the votes cast thereon. >Emphasis added!

Section 8 provides:

If a majority of votes cast upon an initiated or a referred measure are affirmative, it shall be deemed enacted. An initiated or referred measure which is approved shall become law thirty days after the election, and a referred measure which is rejected shall be void immediately. If conflicting measures are approved, the one receiving the highest number of affirmative votes shall be law. A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house. >Emphasis added!

Again, "measure" in Sections 6, 7 and 8 refers only to the "parts" or "items" being referred.

It is evident from this brief review that "measure" means an entire bill or part of a bill, depending upon the context in which it is used. This indicates that "measure" as used in the last sentence of Section 2 ("The secretary of state shall approve the petition for circulation if it is in proper form and contains . . . the full text of the measure") may refer either to an entire bill or the part of a bill being referred.

It is my opinion that a common-sense approach should be taken which minimizes the obstacles to the people's exercise of the referendum right. Therefore, this office would advise as follows:

If the referred "items" or "parts" of a bill are clearly severable and distinct from the "remainder" of the bill, printing the entire bill on a referral petition would not be an absolute requirement.

If, however, the referred "items" or "parts" are interrelated with the "remainder" of the bill and confusion may arise from the partial referral, the entire bill should be contained in the petition. This would allow a potential petition signer to read the "items" or "parts" to be referred in the context of the entire bill.

We note that printing the entire bill would preclude a challenge to a referral petition.

In regard to House Bill 1138 - a bill which appears to be complex and interrelated - a petition should be prepared and submitted to the Secretary of State pursuant to Section 2. At that time the Secretary of State, after consulting with this office, could determine whether the petition is adequate and meets the criteria set forth above.

Article 105, Constitution of North Dakota, is attached for your review.

I trust this responds to your questions.

Sincerely,

ALLEN I. OLSON

Attorney General