

Date Issued: March 4, 1981 (AGO 81-19)

Requested by: Lieutenant Governor Ernest M. Sands

- QUESTION PRESENTED -

Whether a law which provides an appropriation for merit scholarship awards to eligible persons, and which offers these financial awards to such persons solely on the basis of academic achievement and without regard to financial need, is constitutional.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a law which provides for an appropriation for merit scholarship awards to eligible students based on that individual's test results from an academic achievement test, and without regard to financial need, is not specifically prohibited by the North Dakota Constitution.

- ANALYSIS -

No provision of the North Dakota Constitution specifically prohibits an appropriation for merit scholarships. The most relevant provision is Article X, Section 18 of the North Dakota Constitution (formerly Section 185) which provides as follows:

Section 18. The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation. (Emphasis supplied).

The Supreme Court of North Dakota has interpreted Article X, Section 18 of the North Dakota Constitution on several occasions. See Gripentrog v. City of Wahpeton, 126 N.W.2d. 230 (N.D. 1964); and Northwestern Bell Telephone Co. v. Wentz, 103 N.W.2d. 245 (N.D. 1960). In Gripentrog, the city had issued revenue bonds under the Municipal Industrial Development Act for the construction of a sugar beet processing plant which it proposed to lease to a private company. The question arose relative to whether this proposed development violated Section 185 (Article X, Section 18) of the North Dakota Constitution. In addressing this issue, the Supreme Court made the following relevant statements:

Section 185 does not prohibit the making of loans or giving of credit or making donations in connection with a city's engaging in any industry, enterprise, or business except engaging in liquor traffic. What it does prohibit is for a city 'otherwise' to make loans or give its credit or making donations. In other words, making loans or giving credit may be done in

connection with the city's engaging in any permissible industry, enterprise, or business, but not otherwise.

As we said in Northwestern Bell Telephone Co. v. Wentz (N.D. 1960), 103 N.W.2d. 245, it is common knowledge that no one can successfully engage in any industry, enterprise, or business without in some manner being involved in lending, the giving of credit, or the making of donations. Surely the framers of Section 185 of our Constitution would not have granted to the state and to any county or city the power to engage in industry, enterprise, or business and then have denied them the right to make loan or give credit in connection with the operation of such industry, enterprise, or business. 126 N.W.2d. 230, 237-238.

In other words, the prohibition against loans, credit, or donations to or in aid of any individual, association, or corporation, as contained in Article X, Section 18 of the North Dakota Constitution, does not apply when the state is making internal improvements or engaged in industry, business or enterprise. See Attorney General's Opinion to Honorable Bruce Hagen, dated June 27, 1978.

The Legislative Assembly of North Dakota has recognized in the past that providing educational assistance is a permissible activity or enterprise which the state should be engaged in. Chapter 15-62.2, N.D.C.C., (Student Financial Assistance Program) and chapter 15-62.3, N.D.C.C., (Tuition Assistance Grant Program) are examples. Therefore, the prohibition against "donations to or in aid of any individual" contained in Article X, Section 18, is not applicable.

One should also keep in mind the strong presumption of constitutionality that adheres to all legislative enactments. Shaw v. Burleigh County, 286 N.W.2d. 792 (N.D. 1979). While the Legislative Assembly does have a great deal of responsibility to scrutinize the constitutionality of its products, it is also recognized that the wisdom, necessity, or expediency of legislation are matters for legislative, not judicial, consideration. State v. Taylor, 1956 N.W. 561 (N.D. 1916).

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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