

Office of the Attorney General  
State of North Dakota

Opinion No. 82-75

Date Issued: November 18, 1982

Requested by: Darrell R. Ohlhauser  
Acting Director  
Office of Management and Budget

--QUESTION PRESENTED--

Whether Section 57-51.1-07(1) of the North Dakota Century Code enacted as an initiated measure and amended by the Forty-seventh Legislative Assembly requires future legislative assemblies to appropriate moneys sufficient to fund per pupil costs at 70% of the educational cost per pupil in public elementary and secondary education as determined under the provisions of Chapter 15-40.1, N.D.C.C.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that Section 57-51.1-07(1), N.D.C.C., cannot require future legislative assemblies to appropriate money sufficient to fund per pupil costs at 70% of the educational costs per pupil in public elementary and secondary education as determined under the provisions of Chapter 15-40.1, N.D.C.C.

--ANALYSIS--

Section 57-51.1-07(1), N.D.C.C., allocates 60% of the moneys deposited in the oil extraction tax development fund to the school aid program and states, in part:

. . . [i]t is the intent of the electors and the legislative assembly that other appropriations made by the legislative assembly for state aid to schools in accordance with chapter 15-40.1, when added to the amount allocated under this subsection, shall provide at least seventy percent of the funds required to meet the educational cost per pupil in public elementary and secondary education as determined under the provisions of chapter 15-40.1.

Section 57-51.1-07(1), N.D.C.C., was enacted through approval by the electorate of an initiated measure on November 4, 1980, and was amended by the Forty-seventh Legislative Assembly. See 1981 N.D. Sess. Laws Chapters 2, § 5; 198 § 2; and 613 § 2. Section 57-51.1-07(1), N.D.C.C. neither appropriates moneys nor interferes with the legislative assembly's power to appropriate moneys pursuant to Article X, Section 12(1) of the North Dakota Constitution. See Sunbehm Gas, Inc. v. Conrad, 310 N.W.2d 766 (N.D. 1981). Although the initiated measure stated that '[i]t is the mandate of the electors that

this act will be appropriately funded by the legislative assembly' (emphasis supplied), in Sunbehm Gas, supra., at page 769, the North Dakota Supreme Court noted that 'the actual process of appropriating funds to accomplish the measure's objectives is left to the legislature.' Nothing in the amendments which the Forty-seventh Legislative Assembly made to the measure renders this conclusion inapplicable.

The language of Section 57-51.1-07(1), N.D.C.C., quoted above sets forth the expectation of the electors and the Forty-seventh Legislative Assembly in adopting and amending this section. Such statements of expectation and policy do not bind a subsequent legislative assembly to appropriate moneys to further the policies and expectations of previous legislative assemblies. See State, ex rel., Warren v. Nusbaum, 208 N.W.2d 780, 803 (Wis. 1973) and cases cited therein; and State Port Authority v. Arnall, 41 S.E.2d 246 (Ga., 1947). As the Supreme Court of Maine stated in Opinion of the Justices, 79 A.2d 753 (Me. 1951):

One legislature cannot obligate succeeding legislatures to make appropriations. One legislature may, within constitutional limitations, impose contractual obligations upon the state which it is the duty of the state to discharge; but one legislature cannot impose a legal obligation to appropriate moneys upon succeeding legislatures. 79 A.2d 753, 756.

As stated by the Supreme Court of Florida, 'only limiting provisions of the State Constitution . . . can have restrictive effects on the legislative power to appropriate.' Thomas v. Askew, 270 S.2d 707, 709, (Fla. 1975).

The principle that each legislative assembly has plenary power has long been accepted in North Dakota. See, e.g., State, ex rel., McCue v. Blaisdell, 118 N.W. 141 (N.D. 1908). The initiated measure and subsequent amendments by the Forty-seventh Legislative Assembly appear to hold future legislative assemblies responsible for appropriating sufficient funds to carry out the purposes of the act. Nonetheless, each legislative assembly succeeding the Forty-seventh Legislative Assembly has plenary authority to determine whether or not it will appropriate the moneys necessary to accomplish the purposes of the initiated measure and the Forty-seventh Legislative Assembly. One legislative assembly often does not appropriate the money that is necessary to continue the policies and expectations of the previous legislative assembly. See, e.g., 1965 N.D. Sess. Laws 330 (now Chapter 51-10, N.D.C.C.) which created the North Dakota Trade Commission and which appropriated \$50,000.00 to fund its operations during the 1965-1967 biennium. No successive legislative assembly has appropriated money to fund the commission which is now effectively dead although the law creating it has not been repealed. See also, City of Fargo, Cass County v. State, 260 N.W.2d 333 (N.D. 1977). In that case, an existing statute was clear evidence that the 1959 Legislative Assembly intended the state to pay city special assessments against state owned property. Nonetheless, the North Dakota Supreme Court held that a Fargo special assessment against real estate of North Dakota State University could not be paid because a successive legislative assembly had not appropriated money for its payment.

Through their power of initiative, the people of North Dakota are 'in effect a coordinate legislative bod[y]' with the legislative assembly and 'a law enacted by one is subject to the same rules of construction and the same tests of constitutionality as one enacted by the other.' See State, ex rel. Eckroth v. Borge, 283 N.W. 521 (N.D. 1939). Similarly, when the people are enacting statutes through their power of initiative, they are acting as a co-legislative assembly which is subject to the requirement that 'no one legislature has the right to 'tie the hands of its successors with reference to subjects upon which they have equal power to legislate.'" See State Port Authority v. Arnall, 41 S.E.2d 246, 255 (Ga. 1974).

--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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