

Date Issued: February 25, 1987 (AGO 87-05)

Requested by: Honorable Richard W. Kloubec
Speaker, House of Representatives

- QUESTION PRESENTED -

Whether an initiated measure approved by the electors may be amended or repealed by less than a two-thirds vote of the Legislative Assembly where the Legislature's amendment or repeal is enacted less than seven years after the initiated measure's effective date but becomes effective after that seven year period has passed.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that an initiated measure approved by the electors may be amended or repealed by less than a two-thirds vote of the Legislative Assembly where the Legislature's amendment or repeal is enacted less than seven years after the initiated measure's effective date but becomes effective after that seven year period has passed.

- ANALYSIS -

N.D. Constitution Article III, 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 A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house.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 supplied). The issue presented is whether the seven year restriction of the last sentence of N.D. Constitution Article III, Section 8, applies only to a statute that repeals or amends an initiated measure when that repealing or amendatory statute becomes effective within seven years of the initiated measure's effective date, or whether that restriction applies to all amendatory or repealing statutes that are enacted within the seven year period.

There are no N.D. Supreme Court cases deciding this issue. Moreover, the history of the N.D. Constitution Article III, Section 8, does not provide a clear answer to this question.

The language of N.D. Constitutions Article III, Section 8, was drafted by delegates at the 1972 Constitutional Convention as part of the Convention's revision of the Constitution's initiative and referendum provisions. See *Haugland v. Meier* 339 N.W. 2d. 100, 107 (N.D. 1983); Debates of the N.D. Constitutional Convention was not adopted by the voters in 1972, the 1972 initiative and referendum constitutional provisions were proposed again by the Legislature in 1977 and became part of the Constitution when the Legislature's proposal was approved by the voters in 1978. See *Haugland v. Meier*

339 N.W. 2d. at 107.

Some discussion at the 1972 Constitutional Convention at least implies that the amendment and repeal restriction of N.D. Constitution Article III, Section 8, would be construed to restrict only the Legislature's ability to make an initiated measure's provisions ineffective within the seven year period. See Debates of the N.D. Constitutional Convention of 1972, at 917, 919 (statements of Delegate Haugen). This discussion tends to support an interpretation that N.D. Constitutional Article III, Section 8, does not restrict the enactment of amendatory or repealing legislation within the seven year period as long as that legislation does not become effective until after the seven year period has passed.

Other statements at the 1972 Convention, however, indicate that at least some of the Convention delegates believed that the seven year period was used in the provision because it would protect initiated measures from amendment or repeal for a certain number of legislative sessions. See *id.* at 917 (statement of Delegate Cart). This interest in the number of legislative sessions involved could signify that the drafters of section 8 were concerned with the enactment of amendatory or repealing legislation during the seven year period and not with the effective date of such legislation.

These contradictory statements at the 1972 Constitutional Convention demonstrate that the history of N.D. Constitutional Article III, Section 8 does not conclusively resolve this issue.

Therefore, this question must be answered based solely upon the specific language of N.D. Constitutional Article III, Section 8. The Constitution states only that an initiated measure may not be "repealed or amended" for seven years, except by a two-thirds vote of both legislative houses. If a statute that repeals or amends an initiated measure has an effective date of more than seven years after the initiated measure's effective date, there would be no "repeal" or "amendment" of the initiated measure within the seven year period. Under those circumstances, the two-thirds vote requirement of N.D. Constitutional Article III, Section 8, would not apply.

- EFFECT -

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

NICHOLAS J. SPAETH
Attorney General

Assisted by: Laurie J. Loveland
Assistant Attorney General