

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 88-17

Date issued: June 16, 1988

Requested by: Senator Dan Wogsland

- QUESTIONS PRESENTED -

I.

Whether the procedure followed in the enactment of Senate Bill 2035 was constitutionally infirm or improper.

II.

Whether Senate Bill 2035 embraces more than one subject.

III.

Whether the amendments to Senate Bill 2035 changed its general subject matter.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that the procedures followed in the enactment of Senate Bill 2035 were proper.

II.

It is my further opinion that Senate Bill 2035 embraces only one subject.

III.

It is my further opinion that the amendments to Senate Bill 2035 did not change its general subject matter.

- ANALYSES -

I.

The first issue raised by this request pertains to whether the procedure followed in enacting Senate Bill 2035 invalidates the law.

In reviewing the procedure used by the Legislature to enact a law, the general rule is the Legislature's action may not be challenged unless it exceeds or violates constitutional authority. See State ex rel. Spaeth v. Meiers, 403 N. W. 2d 392, 394 (N. D. 1987). In cases where the Legislature has set specific

rules of procedure, the Legislature's failure to follow those rules "is a matter entirely within its own control or discretion, so long as it observes the mandatory requirements of the Constitution." Carlton v. Grimes, 23 N. W. 2d 883, 889 (Iowa 1946). In that regard, legislative rules of procedure, if not required by the constitution, may be suspended, contrary action may be taken, and the courts will not review the action. Anderson v. Atwood, 262 N. W. 922, 923 (Mich. 1935). A partial rationale for this conclusion is based upon the separation of powers doctrine. A more pragmatic reason is that since the Legislature made the rules, its failure to follow them is merely an amendment of those rules for that situation. State ex rel. La Follette v. Stitt, 388 N. W. 2d 684, 697 (Wis. 1983). See also 1 Sutherland Statutory Construction ' 7.04 (4th ed. 1985).

Article IV of the North Dakota Constitution pertains to the legislative branch. Sections 12 and 13 are of particular importance to the issues raised here. Section 12 allows each house to determine its rules of procedure. Section 13 contains the following provisions:

1. Each house must keep a journal.
2. Passage must be by a majority of each house.
3. No amendments may be made which change the general subject matter of the bill.
4. Bills may not embrace more than one subject.
5. The subject of the bill must be expressed in its title.
6. Every bill must be read on two separate natural days.

This request questions whether the proper hearings were conducted on Senate Bill 2035. While it is a generally held belief the Legislature must hold a hearing on each bill, a hearing on either a bill or an amendment to the bill is not constitutionally required. The belief may be based upon an implication derived from the rules adopted by the House and Senate and from long followed practice. Nonetheless, a failure to follow even a specific requirement that a hearing be held would not be fatal to the enactment of a bill because of the rule that the Legislature need only comply with constitutional requirements in enacting a bill. Since our constitution does not require a hearing, the failure to conduct one would not be fatal.

Senate Rule 324 and House Rule 324 each require all bills be referred to a committee. Senate Rule 502 and House Rule 502 require the minutes of the committee to reflect the bills discussed and the remarks of persons appearing in relation to them. The implication then is that the minutes taken are of hearings held on the bills. Senate and House Rules, 50th Leg. (1987).

As the facts in this case reveal, all hearings required by implication of the Legislature's rules were held. The process through which Senate Bill 2035 passed was lengthy, but it comports with the constitution and the rules of the respective houses.

The bill originated as a recommendation of the 1985-87 Interim Agriculture Committee "to declare the wetlands policy of the state." Legislative Council of North Dakota, Report to the Leg. Assembly of 1987, at 21 (1987). It was "read" on two occasions in each house. On February 12, 1987, the House and Senate Standing Agriculture Committees held a joint hearing on Senate Bills 2507 and 2035. Both bills passed out of the Senate Committee on February 13, 1987. Hearings on S. 2507 and S. 2035 before the Senate Committee on Agriculture, 50th Leg. (1987). Senate Bill 2035 was amended on the Senate floor by deleting section 2 which required a uniform wetlands classification. It passed the Senate as amended on February 18, 1987. S. J. 942-43, 50th Leg. (1987).

Upon introduction into the House on February 25, 1987, the bill was referred to the House Agriculture Committee. The Committee held hearings on March 13, 1987, and March 19, 1987, and the bill was reported back amended. H. J. 2199, 50th Leg. (1987). The amendment was adopted and the bill passed the House. H. J. 2244-45, 50th Leg. (1987).

The Senate refused to concur in the House amendments and a conference committee from each body was appointed to resolve the differences. S. J. 2197-98, 50th Leg. (1987); H. J. 2642, 50th Leg. (1987). During the three conference committee meetings the bill was changed to the form in which it finally passed both houses by a majority vote and was signed by the Governor.

Thus, as to the path the bill followed, rules established by the Legislature and constitutional requirements were complied with when Senate Bill 2035 was enacted.

II.

The second part of the inquiry asks whether Senate Bill 2035 embraces more than one subject. A bill embracing more than one subject is prohibited under section 13 of article IV of the North Dakota Constitution. The North Dakota Supreme Court has addressed this constitutional provision (when it was numbered as article IV, section 33) in Sunbehm Gas, Inc. v. Conrad, 310 N. W. 2d 766 (N. D. 1981). The Court stated: "all matters treated by one piece of legislation [must] be reasonably germane to one general subject or purpose." Id. at 772.

To determine whether a bill embraces more than one subject, one must look beyond the title. Although a "title indicates that several matters relating to the same general subject are embodied, it cannot be said that [a bill] embraces more than one subject." State v. Colohan, 286 N. W. 888, 893 (N. D. 1939). "[L]egislation may include any matter naturally and reasonably

connected with the subject of the act as expressed in the title." State ex rel. Weeks v. Olson, 259 N.W. 83, 85 (N.D. 1935), cited in Kessler v. Board of Educ. of Fessenden, 87 N.W.2d 743, 753 (N.D. 1958).

The title of Senate Bill 2035 declares that the act relates to wetlands. Although the bill contains several provisions, each of them are "naturally and reasonably connected with the subject of" wetlands.

Section 1 places new members on the Garrison Diversion Overview Committee. Garrison is the premier water project in North Dakota. The preservation of wetlands for mitigation and the drainage of wetlands for irrigation development are integral parts of the Garrison Project. Additionally, the placement of the chairs of the Agriculture Committees on the Overview Committee is consistent with the new state policy declared in section 2 -- "The legislative assembly finds that agriculture is the most important industry in North Dakota and that agricultural concerns must be accommodated in the protection of wetlands." S. 2035, ' 2, 50th Leg. (1987). The presence of the chairs of these committees promotes communication between the Legislature's Committees on Agriculture and the Garrison Overview Committee. Thus, when the Overview Committee conducts its responsibility of overseeing Garrison for the Legislature, agricultural facets will more likely be considered.

Section 2 declares the Legislature's policy with regard to wetlands and their development. Section 3 contains definitions pertaining to sections 2 through 12. Sections 4, 5, 6, 10, 11, and 12 establish a procedure for permitting drainage of wetlands and replacing wetlands. Section 7 establishes a uniform method of classifying wetlands. Sections 8 and 9 establish a procedure for closing wetland drains which have not been permitted. 1987 N.D. Sess. Laws ch. 642. Sections 13 and 14 relate to the repeal of the old wetland drainage permit law and effective dates of various parts of Senate Bill 2035.

As each section of Senate Bill 2035 is reasonably germane to the subject of wetlands, the bill does not embrace more than one subject. Nor does the title of the bill leave one guessing because it specifically sets forth the general subject of the bill as being wetlands.

III.

N.D. Const. art IV, ' 13, prohibits an amendment to a bill "in a manner which changes its general subject matter." The general subject matter of Senate Bill 2035, at the commencement of its journey to become law, was to establish wetlands policy and redefine the perimeters and legal mechanism for draining wetlands. At the end of its journey, the general subject matter remained the same.

As discussed in section II of this opinion, all provisions of the final enactment relate to the subject of wetlands. Prior to the adoption of the several amendments, the topic of the bill was wetlands; that is, the

legislation as originally proposed would have amended existing drainage laws and established a new wetlands policy. As discussed above, the version which eventually passed covers the same general subject matter of wetlands policy and how that policy will be affected by drainage. Consequently, although the implementation of the wetlands policy is changed by the amendments, the general subject matter of the bill was wetlands. The constitutional prohibition against amendments which change the general subject matter of a bill was, therefore, not violated by the various amendments of the bill. N. D. Const. art. IV, ' 13.

ATTORNEY GENERAL'S OPINION 88-17
June 16, 1988
Page 6

- EFFECT -

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

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