

OPINION
56-70

April 2, 1956 (OPINION)

JUSTICE COURT

RE: Plea of Guilty Without Advice of Counsel

In your letter of March 9, 1956, you raise a question as to the interpretation of chapter 222 of the 1949 Session Laws of North Dakota.

The last sentence of chapter 222 reads as follows:

Any defendant having pleaded guilty without the advice of counsel shall, within thirty days thereafter, upon application of his attorney, be entitled to have any judgment entered on such plea vacated and a new trial granted."

This sentence sets forth the question you raise, namely, what is meant by this statement.

Turning to the rules of interpretation set forth in the code, we find that words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in the code are to be understood as thus explained. Further, we find that when the wording of the statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. Of course, the sentence above quoted may not be clear of all ambiguity. Nevertheless, I think we are obliged to take the statement just as it appears.

The only other alternative would be to hold that the section applies only to those defendants who plead guilty without expressly waiving the right of counsel as in the case of the court neglecting to offer the use of counsel. However, the difficulty with the interpretation is that the defendant had that right anyway as the statute stood before the enactment of chapter 222 of the 1949 Session Laws.

Of course, as you state in your letter, this chapter seems to mean that a justice of the peace would have to have an attorney present to represent the defendant at all trials and to advise the defendant if the hearing is to have any real significance. But, we cannot help that.

Therefore, it is the opinion of this office that the chapter must be taken just as it reads, and with particular reference to the last sentence therein we hold that if any defendant pleads guilty without the advice of counsel he may within thirty days thereafter obtain counsel and make application to have the judgment entered upon his plea vacated and a new trial granted, and the justice must consider such application favorably.

We will not pass upon the constitutionality of the said chapter but will leave that to the courts.

LESLIE R. BURGUM

Attorney General