

**OPINION
61-125**

August 9, 1961 (OPINION)

GOVERNOR

RE: Workmen's Compensation Bureau - Designation of Chairman

This is in response to your letter in which you asked for a ruling on the provisions of section 65-02-04, North Dakota Century Code, pertaining to the designation of a chairman for the North Dakota Workmen's Compensation Bureau by the Governor.

The present chairman was reappointed as a commissioner in July, 1959, for a period of six years, and was designated as chairman by the former Governor. The specific question is whether or not the present Governor may at this time designate and appoint a chairman to replace the present chairman previously designated by the former Governor.

The statute to be construed was enacted in 1957 and provides as follows:

65-02-04. CHAIRMAN OF THE BUREAU. The governor shall designate one of the commissioners as chairman of the bureau who is to act in such capacity for the term of his appointment as commissioner or until his successor has been appointed, designated and qualified."

The Legislative history discloses that the enactment was the result of the passage of House Bill 832 of the 1957 Legislature. This bill as originally introduced provided among other things for a director to administer the Workmen's Compensation Act in lieu of commissioners. The bill was passed in the House by a strong majority. It was transmitted to the Senate where it met with objections. In the Senate the bill was amended by striking everything after the words "A bill" and by substituting the language as now found in 65-02-04 as set out above (see 1957 House Journal, page 1082). After being so amended, it was passed and became law. House Bill 832 apparently was the outgrowth of the investigation of the Bureau pursuant to Concurrent Resolution D - 1, 1955 Legislature. From the legislative history we can conclude that the Legislature specifically wished to empower the Governor to appoint the chairman. However, it does not give us too much information as to the immediate control of the chairman by the Governor.

Prior to this the chairman was selected by the commissioners under the provisions of 65-02-04 before the amendment which provided as follows:

CHAIRMAN OF BUREAU. At its first meeting in July in each odd-numbered year, the commissioners shall select one of their number to act as chairman of the bureau. The chairman shall act in such capacity for a term of two years or until his successor is selected and qualified."

In exploring pertinent legislation in an attempt to ascertain legislative intent, careful attention was given to any statutes dealing with the chairman of the Workmen's Compensation Bureau, to determine whether or not the status, role or duties of a chairman were appreciably modified as might be related to the question at hand.

From such examination, it was found that the position of business manager was created in 1957 (chapter 44 - 1957 Session Laws) to be appointed by the chairman. This was by an unusual route through an appropriation measure which by its terms was only for the biennium 1957 - 1959. The subsequent appropriation measures (chapter 75, 1959 Session Laws and chapter 32, 1961 Session Laws) contained only a line item for business manager, but was silent as to his appointment. From this we must conclude that the appointment of the Bureau business manager is subject to the action of the board as other matters are decided by the board.

In examining the Workmen's Compensation Act, it is also found that the chairman is required to approve vouchers for travel expenses. Other than this, the statutes are silent on the duties of the chairman. From this it appears eminent that the chairman is, as in other boards and commissions, the presiding officer. It is his duty to carry out the directives of the commission. In one sense he is their servant, and in another he is their spokesman and representative; but as to the voice in the operation or administration, he has only one vote the same as any other commissioner. With this background we must now construe the language in question.

We have, in an effort to determine the meaning of section 65-02-04, compared same with constitutional and statutory provisions relating to state officers, and it was found that all of these provisions used the word "and" instead of the word "or" preceding the phrase "until his successor is elected and qualified." One exception to this as relating to district officers was found in section 27-05-02 of the North Dakota Century Code. Here the term "or" was used. However, it is noted that the term "or" in this instance was the result of recodification rather than legislation. This was brought out in *State v. Friedrich*, 108 N.W. 2d. 681.

We also examined statutes relating to various state boards, county officers, municipal officers, etc., and we found that the term "and" is used in a majority of the statutes. The term "or" was used in the statutes relating to village officers and trustees (sections 40-07-04 and 40-07-08) and the statute relating to the selection of chairman of the county commissioners (11-11-08). These sections apparently have not been construed by any court of competent jurisdiction. As far as we can determine the officers mentioned in these sections served the period for which they were elected or designated as set out in the statutes.

However, we cannot take this as absolute authority for another reason, which is, that the officers mentioned in these sections are elected or designated at a certain specific time which is not the case in section 65-02-04. We also compared the language with statutes relating to officers who served at the will or pleasure of

the Governor or appointing authority. As an example, the Accounts and Purchases Director, section 54-44-03: It is provided that there shall be a Director of the Department of Accounts and Purchases, who shall be appointed by and serve at the will of the Governor. Here the thought is expressed clearly.

Similarly, the language relating to State Highway Commissioner, section 24-02-02 provides as follows:

A state highway commissioner shall be appointed by the governor and shall serve at the pleasure of the governor. . . ."

Somewhat in the same category is the Superintendent and Assistant Superintendent of the State Highway Patrol. Section 39-03-02 provides:

The governor shall appoint a state highway patrol superintendent and an assistant highway patrol superintendent who shall enforce the provision of the laws of this state relating to the protection and use of the highway in this state and the operation of motor and other vehicles upon such highways."

It is noted that this provision does not specifically state that he shall serve at the pleasure or will of the Governor. By construction, under the general rules, the Superintendent holds office at the will of the Governor. This is largely on the basis that where it is silent as to the length of the term, the office holder holds office only at the pleasure and will of the appointing authority. Such is not the case in the statute in question.

The authorities have expounded at length on the word "or" and how it may be interpreted. 50 Am. Jur. Statutes, section 280 through 290; 82 C.J.S. Statutes, section 335, page 572,; and Volume 30, Words and Phrases, beginning page 33 through page 96; all dealing with the proposition under what circumstances the word "or" is construed as meaning "and", both under penal and civil statutes, and when the word "or" is considered an alternative and also when the word "or" cannot be construed as "and." The text references are replete on the construction of the word "or." Unfortunately, however, we are unable to find in our research case law dealing squarely with the word "or" as used in our question.

A research and study of the authorities on statutory interpretation and construction brings us to the conclusion that the rule of law which carries the greatest weight and authority is the one which states that a statute must be construed to give effect and meaning to every phrase and word is possible (50 Am. Jr. Statutes section 363, page 368; 82 C.J.S. Statutes, section 346, pages 705 to 717; Jones Lumber Co. v. Marmarth, 67 N.D. page 320). This rule apparently is buttressed on the further presumption that the Legislature does not employ idle language. The standard dictionary defines the term "or": a coordinating particle that marks an alternative.

With this rule in mind, we explored the various constructions of the statutes and noted the results. For example, if the word "or" were given a pure alternative meaning, the phrase "or until his successor

has been appointed, designated and qualified," would modify and qualify the preceding phrase, "who is to act in such capacity for the term of his appointment as commissioners." This in effect would negate the phrase "who is to act in such capacity for the term of his appointment as commissioner," and would do violence to the prevailing rule of law on statutory construction. It might be suggested that the term "the time of his appointment as commissioner" is employed only to prevent a construction which in effect would create a new office, namely that of chairman. This must also be discarded for the reason that the opening phrase, "shall designate one of the commissioners as chairman of the bureau," already limits the designation of the chairman from one of commissioners. It may also be suggested that the term "appointed, designated and qualified" permits the designation of a new chairman upon the appointment and designation and qualification of a new commissioner. This cannot be supported without doing violence to the phrase "who is to act in such capacity for the term of his appointment as commissioner."

We construe this term to mean that upon the expiration of the term of the chairman, the Governor may appoint a successor as commissioner and may also designate such successor as chairman. For that matter, the law permits the Governor at the expiration of the term of the chairman to appoint any commissioner, even the new commissioner who might be appointed to replace the commissioner whose term expired. If the word "either" had been used preceding the phrase, "the term of his appointment as commissioner," then the particle "or" would have to be construed as a true alternative.

All of this leads us to the proposition that the word "or" is used as a two-way connecting particle. It refers to both a shortened and extended term of office. It refers to the shortened term in instances where the chairman, for whatever reason, ceases to be chairman, such as resignation, etc., and it refers to the extended term where an appointment or designation is not made immediately after the original term expires. This construction gives effect and meaning to every phrase and word and does not devalue or negate any phrase or word. While this construction might in an indirect way repeat what is implied by operation of law in respect to the instance where the commissioner ceases to be the commissioner for whatever reason, nevertheless it is not harmful. It would not be considered surplusage merely because it states what is implied by operation of law. We have many statutes which spell out the implied rule of law specifically.

In the case of *State v. Lentz*, 146-Pac. 932, the court had under consideration a statute relating to judicial offices which used the term "or until his successor is duly elected and qualified." The court that the Legislature inadvertently used the term "or" instead of "and," and disposed of the question by saying that the term "or" is to be read as "and." While we are not prepared to say that the North Dakota Legislature inadvertently used the term "or" instead of "and," we, however, do conclude that the term "or" is used as a two-way particle. Being that the original section before the amendment used the word "or" we believe this to be an instance where the power of suggestion influenced the choice of words.

Under the original section, the commissioners selected a chairman

every two years. In fact, it was rotated in going to the senior member in turn. Had the commissioners under the old statute reorganized at will, we would then be compelled to presume that the Legislature intended a similar construction in the new language. This was not the case. By the same process, we must presume that the Legislature did not use the term differently here.

Based on the foregoing, it is our opinion that the present chairman serves for the term of his appointment as commissioner or until he ceases to be a commissioner, whichever occurs firsts.

It is also our opinion that he holds over after his regular term until a new chairman is designated by either designating a new chairman from the other commissioners, or reappointing the same commissioner, or by appointing a new commissioner and designating him as chairman. If the latter instance, the new commissioner does not take office either as chairman or commissioner until he qualifies.

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