

**OPINION
61-141**

January 17, 1961 (OPINION)

LEGISLATURE

RE: Referred Measure - Amendment

This is in reply to your letter of January 16, 1961, concerning House Bill No. 572 which has been referred to the House Judiciary Committee for consideration.

You state the following facts:

The bill would amend and reenact sections 27-05-01, 27-05-05 and 27-05-08. The source notes reveal that a referred measure in 1919 was the source of at least some of the provisions of each of said sections. Would you kindly advise me whether or not, in your opinion, a two-thirds vote would be required to enact House Bill 572."

We also note that the bill intends to amend and reenact section 27-05-25 of the North Dakota Century Code as well as repeal section 27-05-18 of the North Dakota Century Code.

These sections were originally enacted as a portion of chapter 167 of the 1919 Session Laws. This bill was referred to the electorate and approved by them at a special election held on June 26, 1919. (See page 509 of the 1919 Session Laws.)

We note that Section 25 of the North Dakota Constitution provides in part:

The veto power of the Governor shall not extend to the measures initiated by or referred to the electors. No measure enacted or approved by a vote of the electors shall be repealed or amended by the Legislature, except upon a yea and nay vote upon roll call of two-thirds of all the members elected to each house."

Section 1 of House Bill No. 572 would amend and reenact section 27-05-01 of the North Dakota Century Code relating to the number, composition and number of judges of judicial districts. This section was section 1 of chapter 167 of the 1919 Session Laws. In this connection we note that Section 106 of the North Dakota Constitution provides:

The legislative assembly may whenever two-thirds of the members of each house shall concur therein, but not oftener than once in four years, increase the number of said judicial districts and the judges thereof; such districts shall be formed from compact territory and bounded by county lines, but such increase or change in the boundaries of the districts shall be formed from compact territory and bounded by county lines, but such increase or change in the boundaries of the districts shall not work the removal of any judge from his office during

the term for which he may have been elected or appointed."

In view of Section 25 and 106 of the North Dakota Constitution, quoted in part above, it is our opinion that a two-thirds vote of the members of both houses is necessary to increase the number of judicial districts and the judges thereof, and therefore a two-thirds vote of both houses would be necessary to enact section 1 of House Bill No. 572.

Section 2 of House Bill No. 572 would amend and reenact section 27-05-05 of the North Dakota Century Code. This was originally a portion of section 5 of chapter 167 of the 1919 Session Laws.

Section 3 of House Bill No. 572 would amend and reenact section 27-05-08 of the North Dakota Century Code. This was originally a portion of section 2 of chapter 167 of the 1919 Session Laws. This section has been amended previously and has incorporate Article II, Section 1 of the District Court Rules of Practice established by the Supreme Court in accordance with the statutes and constitution of the State of North Dakota.

Section 4 of House Bill No. 572 would amend and reenact section 27-05-05 of the North Dakota Century Code. This was originally a portion of section 5 of chapter 167 of the 1919 Session Laws.

Section 5 of House Bill No. 572 would repeal section 27-05-18 of the North Dakota Century Code. This was originally a portion of section 2 of chapter 167 of the 1919 Session Laws. This section has been amended previously.

It is apparent that those sections of House Bill No. 572 which would amend statutes which are original portions of chapter 167 of the 1919 Session Laws would be subject to Section 25 of the North Dakota Constitution and would require a two-thirds vote of both houses of the Legislature for their passage.

Insofar as those sections of House Bill No. 572 which would amend statutes which were originally portions of chapter 167 of the 1919 Session Laws, but which have since been amended, are concerned, it is also our opinion that section 25 of the North Dakota Constitution would be applicable and that a two-thirds vote of both houses of the Legislature would be necessary for their passage.

Insofar as those sections of House Bill No. 572 which would amend statutes which were originally portions of chapter 167 of the 1919 Session Laws, but which have since been amended, are concerned, it is also our opinion that section 25 of the North Dakota Constitution would be applicable and that a two-thirds vote of both houses of the Legislature would be necessary for their passage. This portion of our opinion is based upon *State v. Baker*, 71 N.D. 153, 299 N.W. 574, in which the Supreme Court of North Dakota said, at page 579 of the Northwest Report:

A statute amended does not lose its identity. It is still the statute. The initiated measure being amended constitutionally, it is the same as if the provision in the amendment had been in the bill as initiated. For the Legislature to make another

change of this same measure requires the same constitutional vote. This applies to every section of the initiated measure, whether amended or unamended."

It should be noted that two of the justices, concurring specially, did not agree with the conclusion of the majority of the justices that "an initiated or referred measure having once been adopted by popular vote, ever after requires a two-thirds vote in each house to amend or repeal it regardless of the number of valid amendments enacted by the Legislature." See page 581 of the Northwest Reports.

In summary, it is our opinion that House Bill No. 572 is subject to Sections 25 and 106 of the North Dakota Constitution and must receive a two-thirds vote of each house of the Legislature for its valid enactment.

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