

N.D.A.G. Letter to Kloubec (Feb. 13, 1987)

February 13, 1987

Honorable Richard W. Kloubec
House Speaker
House of Representatives
State Capitol
Bismarck, ND 58505

Honorable William E. Kretschmar
Chairman
House Judiciary Committee
House of Representatives
State Capitol
Bismarck, ND 58505

Dear Representatives Kloubec and Kretschmar:

You have requested an opinion on the following question:

In what ways, if any, do any provisions of House Bill 1049 conflict with the North Dakota Constitution, especially Section 23 of Article XI?

It is my opinion that House Bill No. 1049 does not conflict with N.D. Const. Art. XI, §23.

N.D. Const. Art. XI, §23, reads as follows:

Section 23. The real and personal property of any woman in this state, acquired before marriage, and all property to which she may, after marriage become in any manner rightfully entitled, shall be her separate property, and shall not be liable for the debts of her husband.

N.D. Const. Art. XI, §23, protects two separate classes of property of a woman. The first is property "acquired before marriage" and the second is property "to which she may, after marriage become in any manner rightfully entitled."

Section 4 of House Bill No. 1049 reads, in pertinent part, as follows:

SECTION 4. Classification of property of spouse.

1. All property of spouses is marital property except that which is classified otherwise by sections 1 through 18 of this Act.
2. All property of spouses is presumed to be marital property.

3. * * *
4. * * *
5. * * *
6. Property owned by a spouse at a marriage after the determination date is individual property.
7. * * *
8. * * *
9. Except as provided otherwise in sections 1 through 18 of this Act and to the extent it would affect the ownership rights of the spouse that existed in the property before the determination date, during marriage the interest of a spouse in property owned immediately before the determination date is treated as if it were individual property.

"Determination date" is defined in Section 1 as:

5. "Determination date" means the last to occur of the following: (a) marriage; (b) 12:01 a.m. on the date of establishment of a marital domicile in this state; or (c) 12:01 a.m. on the effective date of this Act.

By specifying that property acquired by a wife prior to marriage is individual property, House Bill No. 1049 is consistent with N.D. Const. Art. XI, §23, as to property "acquired before marriage."

The other class of property addressed in N.D. Const. Art. XI, §23, is referred to as property to which a woman "may, after marriage become in any manner rightfully entitled." The key question is "to what property does a woman become 'rightfully entitled' after marriage?" Since this constitutional provision makes no effort to further define that term, it can only be interpreted as a reference to property laws of the state of North Dakota. Nothing in this provision would seem to limit the authority of the Legislature to enact House Bill No. 1049 defining the respective rights of husband and wife in property acquired after marriage. In other words, the Legislature may determine how a woman becomes "rightfully entitled" to property after marriage.

Finally, Section 8 of House Bill No. 1049 relates to obligations of spouses. A review of that section indicates that under House Bill No. 1049 no individual property of a wife, whether acquired before or during the marriage, would be available for satisfaction of an

obligation of the husband whether incurred before or during the marriage. This is consistent with the protection provided by N.D. Const. Art. XI, §23.

Sincerely,

Nicholas J. Spaeth

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