

Office of the Attorney General
State of North Dakota

Opinion No. 87-16

Date issued: August 17, 1987

Requested by: Honorable Robert E. Hanson
State Treasurer

--QUESTIONS PRESENTED--

I.

Whether 1987 N.D.Sess.Laws ch. 9, § 5 illegally transfers \$2 million from the veterans' postwar trust fund to the state's general fund in violation of N.D.C.C. § 37-14-14 which requires all interest earned on the fund be utilized in benefit of and service to veterans or their dependents.

II.

Whether the transfer of \$2 million from the veterans' postwar trust fund to the state's general fund by the State Treasurer pursuant to 1987 N.D.Sess.Laws ch. 9, § 5 would constitute a breach of the State Treasurer's fiduciary duties to invest and manage the veterans' postwar trust fund moneys pursuant to N.D.C.C. § 37-14-14.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that 1987 N.D.Sess.Laws ch. 9, § 5, does not illegally transfer \$2 million from the veterans' postwar trust fund to the state's general fund in violation of N.D.C.C. § 37-14-14 which requires all interest earned on the fund be utilized in benefit of and service to veterans or their dependents.

II.

It is my further opinion that the transfer of \$2 million from the veterans' postwar trust fund to the state's general fund by the State Treasurer pursuant to 1987 N.D.Sess.Laws ch. 9, § 5 would not constitute a breach of the State Treasurer's fiduciary duties to invest and manage the veterans' postwar trust fund moneys pursuant to N.D.C.C. § 37-14-14.

--ANALYSES--

I.

The veterans' postwar trust fund (hereinafter fund) set forth in N.D.C.C. § 37-14-14 was initially created by 1943 N.D.Sess.Laws ch. 180 which established the Veterans' Post-War-Rehabilitation Reserve Fund for the purpose of financing a rehabilitation program for military veterans of World War II. In 1981, the Legislature enacted 1981 N.D.Sess.Laws ch. 364, § 4 which amended N.D.C.C. § 37-14-14 by changing the name of the "Veterans' Post-War-Rehabilitation Reserve Fund" to the "veterans' postwar trust fund." The amendment also authorized using interest earned on the fund in benefit of and service to veterans or their dependents.

After amendment by the 1981 Legislature, N.D.C.C. § 37-14-14 provided:

37-14-14. Veterans' postwar trust fund. The veterans' postwar trust fund shall consist of moneys transferred or credited to the fund, pursuant to the provisions of this chapter and of other laws. The fund shall be invested by the state treasurer in legal investments authorized by section 21-10-07. All income received on the investments is to be utilized in benefit and service to veterans as defined in section 37-01-40, or their dependents, as determined and appropriated by the legislative assembly.

The 1981 Legislature also appropriated nearly \$4 million to the fund from the excess moneys held in the Viet Nam Adjusted Compensation Fund which was no longer needed to pay bonuses to eligible Viet Nam veterans.

The 1985 Legislature appropriated \$616,000 to the fund apparently to replace principal of the fund that had been expended by the 1983 Legislature.

1987 N.D.Sess.Laws ch. 9, §§ 3, 4, 5, and 6 provide:

SECTION 3. APPROPRIATION--TRANSFER. The amount appropriated in subdivision 1 of section 1 of this Act includes \$1,343,384 which is hereby appropriated and shall be transferred to the veterans' home operating fund from the veterans' postwar trust fund pursuant to section 37-14-14 for the biennium beginning July 1, 1987, and ending June 30, 1980.

SECTION 4. AMENDMENT. Section 37-14-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-14. Veterans' postwar trust fund. The veterans' postwar trust fund shall consist of moneys transferred or credited to the fund, pursuant to the provisions of this chapter and of other laws. The fund shall be invested by the state treasurer in legal

investments authorized by section 21-10-07. The fund and all income received on the investments are to be utilized in benefit and service to veterans as defined in section 37-01-40, or their dependents, as determined and appropriated by the legislative assembly.

SECTION 5. TRANSFER--VETERANS' POSTWAR TRUST FUND--GENERAL FUND. Notwithstanding the provisions of North Dakota Century Code section 37-14-14, the sum of \$2,000,000 from the veterans' postwar trust fund shall be transferred by the state treasurer to the general fund on July 1, 1987.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the legislative assembly that in future bienniums the veterans' home and veterans' affairs be funded from the general fund.

1987 N.D.Sess.Laws ch. 9, § 1 provides specific appropriations for the operation of the Veterans' Home and veterans' affairs program. 1987 N.D.Sess.Laws ch. 9, § 2, among other things, specifically repeals any conflicting laws.

The question on the legality of the \$2 million transfer from the fund to the state's general fund pursuant to 1987 N.D.Sess.Laws ch. 9, § 5 involves the authority of the North Dakota Legislature to further amend N.D.C.C. § 37-14-14 after it was amended by the 1981 Legislature. Specifically, may the Legislature amend the terms and conditions limiting the use of the fund which were established by a previous Legislature?

N.D. Const. Art. III, § 1 provides that "the legislative power of this state shall be vested in a legislative assembly consisting of a senate and a house of representatives," except for certain powers reserved to the people including initiative, referenda, and recall of elected officials. In Verry v. Trenbeath, 148 N.W.2d 567, 570 (N.D.1967), the North Dakota Supreme Court, quoting Martin v. Tyler, 60 N.W. 392, 395 (N.D.1894), stated:

We must remember that legislative power is primarily plenary, and that constitutions are not grants of, but restrictions upon, that power.

The court further stated:

Because the State Constitution does not confer power on the legislature, but is a limitation on power and therefore the legislature may enact any law not expressly or impliedly forbidden by the Constitution of the State or prohibited by the Constitution of the United States, the legislature may in the exercise of its power appropriate and expend money for whatever purpose it pleases unless its action violates a limitation found, either expressly or impliedly, in the Constitution.

Verry v. Trenbeath, 148 N.W.2d at 571.

The existence of the North Dakota Legislature's plenary powers, except as limited by the North Dakota Constitution, United States Constitution, and certain congressional acts, has been recognized by the North Dakota Supreme Court in State ex rel. Agnew v. Schneider, 253 N.W.2d 184, 187-88 (N.D.1977); Montana-Dakota Utilities Company v. Johanneson, 153 N.W.2d 414, 423 (N.D.1967); State v. Baker, 21 N.W.2d 355, 358-59 (N.D.1945); and State ex rel. Montgomery v. Anderson, 118 N.W. 22, 24 (N.D.1908).

In the absence of a specific constitutional prohibition to the contrary, every legislature has complete power and authority to enact, amend, and repeal legislation passed at previous sessions and cannot be bound by legislative action taken at a previous session. In Asbury Hospital v. Cass County, 7 N.W.2d 438, 452 (N.D.1943), the North Dakota Supreme Court quoted Newton v. Commissioners, 100 U.S. 548, 559 (1879), which was also quoted in Connecticut Mutual L. Ins. Co. v. Spratley, 172 U.S. 602, 620-22 (1899), regarding public laws, as follows:

" 'Every succeeding legislature possesses the same jurisdiction and power with respect to them as its predecessors. The latter have the same power of repeal and modification which the former had of enactment, neither more nor less. All occupy, in this respect, a footing of perfect equality. This must necessarily be so in the nature of things. It is vital to the public welfare that each one should be able at all times to do whatever the varying circumstances and present exigencies touching the subject involved may require. A different result would be fraught with evil.' "

Other courts have also declared the inability of a legislature to bind succeeding sessions of the legislature by its acts. See Reichelderfer v. Quinn, 287 U.S. 315, 318 (1932); State v. Wall, 157 S.E.2d 362, 369 (N.C.1967); Department of Insurance v. Hendrickson, 196 N.E.2d 574, 577 (Ind.1964); and In Re McGlone's Will, 32 N.E.2d 539, 542 (N.Y.1940).

According to the Michigan Supreme Court, no person has a "vested right in an existing law which precludes its change or repeal...." Harsha v. City of Detroit, 246 N.W. 849, 851 (Mich.1933). The United States Supreme Court in Patterson v. Colorado ex rel Attorney General, 205 U.S. 454, 461 (1907), stated: "[t]here is no constitutional right to have all general propositions of law once adopted remain unchanged." The Supreme Court has also stated that "legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations." Usery v. Turner Elkhorn Mining Company, 428 U.S. 14, 16 (1976) (citations omitted).

A review of 1987 N.D.Sess.Laws ch. 9, §§ 3, 4, and 5 indicates that the North Dakota Legislature fully intended to amend N.D.C.C. § 37-14-14 to transfer \$2 million of the fund into the state's general fund and more than \$1.3 million of the fund to pay operating expenses of the Veterans' Home, rather than being limited to spending interest earned on the fund. 1987 N.D.Sess.Laws ch. 9, § 5 specifically authorizes the \$2 million transfer to the general fund "notwithstanding the provisions of North Dakota Century Code section 37-14-14." Furthermore, 1987 N.D.Sess.Laws ch. 9, § 6, in conjunction with the two major transfers out of the fund, clearly shows the Legislature's intention to provide funding for veterans' programs in the future from the state's general fund rather than the fund. The previously cited case law firmly establishes the Legislature's authority to amend N.D.C.C. § 37-14-14 in this manner unless a specific constitutional prohibition exists.

Because the fund was established by a statute adopted by the Legislature rather than by a provision of the North Dakota Constitution, the Legislature may amend the terms and conditions of the fund. Furthermore, it does not appear that the enactment of 1987 N.D.Sess.Laws ch. 9, § 5 deprives any person of a constitutionally protected right or is otherwise prohibited by the North Dakota Constitution or United States Constitution. Therefore, it is my opinion that 1987 N.D.Sess.Laws ch. 9, § 5 is not unconstitutional or otherwise illegal because it transfers \$2 million from the veterans' postwar trust fund to the state's general fund when the fund had been limited by the 1981 Legislature to providing benefits for veterans or their dependents from the interest earned on the fund.

II.

The second question raised inquires whether the State Treasurer would breach his fiduciary duties by transferring the \$2 million from the fund to the state's general fund when he had previously been given the duties under N.D.C.C. § 37-14-14 to invest and maintain the fund in accordance with that statute.

It is my opinion that, because the enactment of 1987 N.D.Sess.Laws ch. 9 changed the operation of the fund and, thereby, the responsibilities of the State Treasurer regarding the fund, the State Treasurer would not breach his fiduciary duties by making the required \$2 million transfer from the fund to the general fund pursuant to 1987 N.D.Sess.Laws ch. 9, § 5.

--EFFECT--

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

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