

STATE OF NORTH DAKOTA

ATTORNEY GENERAL' S OPINION 89-9

Date issued: July 17, 1989

Requested by: Sparb Collins, Acting Director  
North Dakota Public Employees Retirement System

- QUESTION PRESENTED -

Whether the initial submission of referral petitions to the Secretary of State is sufficient to suspend the operation of a legislative measure.

- ATTORNEY GENERAL' S OPINION -

It is my opinion that the initial submission to the Secretary of State of referral petitions that are facially valid is sufficient to suspend the operation of a legislative measure.

- ANALYSIS -

The power of the people to refer a legislative act is found in article III of the North Dakota Constitution. N.D. Const. art. III, ' 5, states that a referendum petition may be submitted only within 90 days after the filing of a legislative measure with the Secretary of State. That section also states that the "submission of a petition shall suspend the operation of any measure enacted by the legislative assembly except emergency measures and appropriation measures for the support and maintenance of state departments and institutions. "

N.D. Const. art. III, ' 6, requires the Secretary of State to "pass upon each petition" for sufficiency. If any petition is insufficient, the Secretary of State must notify the committee for the petitioners and allow 20 days for correction or amendment. Id. N.D.C.C. ' 16.1-01-10 further details the manner in which the Secretary of State is to pass upon the sufficiency of a referendum petition. That statute requires the Secretary of State to conduct a representative random sampling of the signatures contained in the petitions by the use of questionnaires, postcards, telephone calls, personal interviews, or other techniques. The statute provides the Secretary of State with a reasonable time period, not to exceed thirty-five days, to conduct his review of the petitions.

The North Dakota Supreme Court has interpreted the phrase "submission of a petition" found in N.D. Const. art. III, ' 5, to refer to a valid or adequate petition. In Haugland v. Meier, 339 N.W.2d 100 (N.D. 1983), the court held that the submission of a "valid petition shall suspend the operation of any

measure enacted by the Legislature . . . . [W]henver an adequate petition is submitted within the 90 days to the Secretary of State . . . it is suspended." 339 N.W.2d at 108. In Moses v. Thorson, 299 N.W. 305 (N.D. 1941), the court concluded that the constitutional reference to a referendum petition contemplated a petition that had been signed by the minimum number of electors, stating that a "petition that has not been signed by at least [the minimum number of] electors is not a referendum petition at all, within the contemplation of the Constitution." 299 N.W. at 308.

Haugland and Moses stand for the proposition that only the submission of valid or adequate referendum petitions causes the suspension of a legislative measure. An argument has been raised that these decisions prevent the suspension of a legislative measure upon the initial filing of referendum petitions until such time as the Secretary of State has conducted the constitutionally mandated review of the petitions and the committee for the petitioners has exercised its right to correct or amend any petition the Secretary of State finds insufficient. On the other hand, a literal reading of N.D. Const. art. III, ' 5, suggests that the initial submission of the referendum petition within the time period acts to suspend the legislative measure.

There is, therefore, some ambiguity as to the phrase "submission of a petition." The constitution does not indicate whether submission refers to the initial submission or the submission of a petition later determined to be valid by the Secretary of State. Haugland and Moses do not address this specific issue. The resolution of this question is critical. Where referral petitions are timely submitted but are not determined to be valid until after the available time for review and correction has expired, it is conceivable that a legislative measure may be in operation for as long as 55 days prior to its suspension. If the measure is eventually rejected by the voters, a host of problems could occur with respect to the effect of the legislative measure during the time in which it was operative.

In resolving the ambiguity surrounding the phrase "submission of a petition" one may apply a number of constitutional construction rules. Principles of construction applicable to statutes are generally applicable to constitutional provisions. State ex rel. Sanstead v. Freed, 251 N.W.2d 898, 908 (N.D. 1977); State ex rel. Walker v. Link, 232 N.W.2d 823, 825 (N.D. 1975). Those who adopted a constitutional provision presumably intended a reasonable result, and courts will, wherever possible, give the provision a construction that will produce that result. State v. Feist, 93 N.W.2d 646, 649 (N.D. 1959). When ambiguity exists within the constitution, a court is authorized to consider the consequences of a particular construction in resolving that ambiguity. State ex rel. Link v. Olson, 286 N.W.2d 262, 269 (N.D. 1979).

There are also rules of construction applicable to the constitutional right to refer legislative measures. The constitutional provision dealing with initiative and referendum must be given a broad and liberal construction. McCarney v. Meier, 286 N.W.2d 780, 785 (N.D. 1979). All doubt as to the

construction of applicable provisions pertaining to rights of people to refer legislative acts must be resolved in favor of upholding such rights. Hernett v. Meier, 173 N.W.2d 907, 911 (N.D. 1970). Finally, there is a presumption that each signature upon a referral petition is the genuine signature of the person whose name it purports to be. In any action brought against the petition on the basis that signatures are insufficient, the party attacking the petition bears the burden of proof. Id.

Application of these general rules resolves the question at hand. The initial submission of a referral petition containing the minimum number of signatures creates a presumption that each signature is a genuine signature of that person. Where the Secretary of State makes an initial determination that a petition bears at least the minimum number of signatures that the constitution requires and those signatures appear facially valid, the Secretary of State must assume the petition is valid pending his review for sufficiency required by the constitution and statute. The timely submission of facially valid petitions causes the suspension of the legislative measure.

This conclusion achieves a reasonable result and avoids the potential legal problems that could occur if a referred measure were allowed to take effect before a referral vote. The legislative measure while effective could create legal rights or obligations. The validity and recognition of those legal rights and obligations would be in doubt and could produce serious legal problems if the referred measure were later rejected by the voters at a statewide general election. Thus, the consequences of allowing a legislative measure to be effective for a short period of time and then be rejected by the voters is unreasonable and unjust. A more reasonable result would be reached if the submission of facially valid petitions would cause the measure to be placed on hold until the voters could exercise their constitutional right to either approve or reject the measure. In this scenario, the legal problems resulting when an act is otherwise allowed to operate for a short period of time would not occur.

This conclusion is also supported by relevant legislative history. The current provision in N.D. Const. art. III, ' 5, discussing the submission of a referral petition and its effect on a legislative measure originated in the 1972 Constitutional Convention. 1973 N.D. Sess. Laws ch. 529 at 1414. Although the precise question at hand was not raised, this history contains some indication that the suspension of a legislative measure begins with the initial filing of the referendum petitions. Delegate Sinner, in supporting the language of Committee Proposal No. 1-108 (the provisions of which are now found in N.D. Const. art. III, ' 5) stated as follows:

Now the committee also felt that it maybe is wise that new tax measures that may be referred do not go into effect. Because if - if we suppose the Legislature passed a sales tax increase and merchants went through all the bother of starting the imposition of this new tax, referral was filed and then it would all stop, we have then been very careful to make sure that this does not happen

and cannot happen with the timetable that the committee is proposing. However, we don't want either the referral to be able to let the tax go into effect and then the people vote and throw it out. We think it's much better that the delay is from the very beginning.

1 Debates of the North Dakota Constitutional Convention of 1972 at 913 (1972) (statement of Delegate Sinner).

Although the timely submission of facially valid petitions causes the suspension of the legislative measure, the Secretary of State still must pursue a review of the petitions, and the committee for the petitioners must be allowed an opportunity to correct any problems or insufficiencies. If the Secretary of State later concludes the petitions are invalid, the measure will no longer be suspended and it will then take effect. This factual situation occurred in 1941 when the North Dakota Supreme Court reversed the Secretary of State's decision upholding the validity of a referral petition. In Moses v. Thorson the court concluded that the legislative measure which was the subject of the petitions and which had been suspended for approximately six weeks because of the filing of the referral petition could still take effect after the court declared the petition invalid. See 299 N. W. at 306-08.

In summary, it is my opinion that the initial submission to the Secretary of State of referral petitions that are facially valid is sufficient to suspend the operation of a legislative measure. This conclusion reaches a reasonable result, avoids serious legal problems resulting from a contrary conclusion, and furthers the people's right to refer legislative measures.

- EFFECT -

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

Nicholas J. Spaeth  
Attorney General

Assisted by: Terry L. Adkins  
Assistant Attorney General

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