

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 95-F-01

Date Issued: January 16, 1995

Requested by: David A. Sprynczynatyk, State Engineer

- QUESTION PRESENTED -

Whether the twenty percent of the oil extraction tax allocated for education by Article X, Section 24 of the North Dakota Constitution and the ten percent of the oil extraction tax allocated by N.D.C.C. § 57-51.1-07 to the resources trust fund are each to be calculated using one hundred percent of the oil extraction taxes collected.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the twenty percent of the oil extraction tax allocated for education by Article X, Section 24 of the North Dakota Constitution and the ten percent of the oil extraction tax allocated by N.D.C.C. § 57-51.1-07 to the resources trust fund are each to be calculated using one hundred percent of the oil extraction taxes collected.

- ANALYSIS -

Article X, Section 24 of the North Dakota Constitution, approved by the electors of the state on November 8, 1994, requires twenty percent of the revenue from oil extraction taxes from taxable oil produced in North Dakota to be allocated to the common schools trust fund and the foundation aid stabilization fund. This measure is effective for tax revenue from oil and gas produced after June 30, 1995.

Article X, Section 22 of the North Dakota Constitution provides as follows:

The legislative assembly may provide by law for a percentage of revenue from taxes imposed on the extraction or production of oil to be allocated and credited to a special trust fund, to be known as the resources trust fund. The principle and income of the resources trust fund may be expended only pursuant to legislative appropriation for:

1. Constructing water-related projects, including rural water systems; and

2. Funding of programs for energy conservation.

Taxes imposed on the extraction and production of oil are credited to the oil extraction tax development fund. N.D.C.C. § 57-51.1-06. The Legislative Assembly has allocated ten percent of the money in the oil extraction tax development fund to a special fund known as the resources trust fund through N.D.C.C. § 57-51.1-07. N.D.C.C. § 57-51.1-07 also allocates the remaining ninety percent of the money in the oil extraction tax development fund to the state's general fund for general state purposes.

To the extent Article X, Section 24 of the North Dakota Constitution allocates twenty percent of the oil extraction taxes and N.D.C.C. § 57-51.1-07 allocates one hundred percent of the those same taxes, there is a conflict between the provisions.

Although repeal or amendment by implication is not favored, when a statute is repugnant to or in conflict with a constitutional amendment, the statute is repealed to the extent necessary to resolve the conflict. See Timm v Schoenwald, 400 N.W.2d 260 (N.D. 1987). A repeal by implication is more likely to be found when the constitutional amendment is self-executing. State ex rel. Agnew v. Schneider, 253 N.W.2d 184 at 195-196 (1977).

"A constitutional provision is self-executing if it establishes a sufficient rule by which its purpose can be accomplished without the need of legislation to give it effect." State ex rel. Vogel v. Garaas, 261 N.W.2d 914 at 918 (N.D. 1978). Article X, Section 24 specifically provides:

Twenty percent of the revenue from oil extraction taxes from taxable oil produced in this state must be allocated as follows:

1. Fifty percent must be deposited in the common schools trust fund.
2. Fifty percent must be deposited in the foundation aid stabilization fund in the state treasury, the interest income of which must be transferred to the state general fund on July first of each year. The principal of the foundation aid stabilization fund may be expended only upon order of the governor, who may direct such a transfer only to offset foundation aid reductions that were made by executive action pursuant to law due to a revenue shortage.

Due to the complete and specific nature of Article X, Section

24 of the North Dakota Constitution, which eliminates the need for legislative enactment to give it effect, it is my opinion that Article X, Section 24 is self-executing.

Because Article X, Section 24 mandates that twenty percent of the oil extraction tax development fund be allocated towards education, the provisions of N.D.C.C. § 57-51.1-07 allocating ten percent to the resources trust fund and ninety percent to the general fund cannot be given effect. When there is an irreconcilable conflict, the necessary implication is that the Legislative Assembly, by enactment of the constitutional provision, intended to amend N.D.C.C. § 57-51.1-07 to the extent of its repugnancy. Rodgers v. Freborg, 240 N.W.2d 63, 66 (N.D. 1976). To determine how to amend N.D.C.C. § 57-51.1-07 to the extent of its repugnancy with the constitutional provision and to give effect to the Legislature's intent, it is necessary to review how the Legislative Assembly allocated the money in the oil extraction tax development fund in N.D.C.C. § 57-51.1-07.

When the Legislative Assembly initially allocated money in the oil extraction tax development fund to the resources trust fund it allocated ten percent of the entire fund. 1983 N.D. Sess. Laws ch. 663. The remainder or whatever was left over was to be deposited in the general fund. Hearing on H. 1724 Before the House Comm. on Education, 48th N.D. Leg. (Feb. 7, 1983) (Statement of Rep. Swiontek) (The main intent of the bill is to jackpot all of the money from oil extraction taxes into the general fund except for ten percent for the resources trust fund).

It is my opinion that, to give effect to the legislative intent to allocate ten percent of the entire fund to the resources trust fund and to reconcile N.D.C.C. § 57-51.1-07 to the maximum extent possible with Article X, Section 24 of the North Dakota Constitution, both the twenty percent for education and the ten percent for the resources trust fund must be calculated based on the entire fund. This would result in seventy percent, rather than ninety percent, of the entire fund remaining to be deposited in the general fund for general state purposes pursuant to N.D.C.C. § 57-51.1-07.

- 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 questions presented are decided by the courts.

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