

N.D.A.G. Letter to Olson (April 16, 1987)

April 16, 1987

Honorable John M. Olson
Senate Minority Leader
North Dakota Senate
State Capitol
Bismarck, ND 58505

Dear Senator Olson:

Thank you for your letter of April 7, 1987, inquiring as to whether the State Board of Higher Education or the Legislative Assembly may change the name of a state institution of higher education without a constitutional amendment. As part of your inquiry, you have asked that I reconsider Attorney General's Opinion 83-7 (1983 N.D. Op. Att'y Gen. 17). I have also received your letter of April 14, 1987, referring a Legislative Council memorandum to my attention.

I have reviewed Attorney general's Opinion 83-7. By this opinion, the Attorney General concluded that no provision in the constitution of the state of North Dakota prohibits the changing of the name of Minot State College nor is there any provision that prohibits the use of the word "university" in the name of an institution of higher education located in a particular city as set forth in our constitution.

With this conclusion, I am in agreement. The North Dakota Constitution does not establish the names of any state educational institutions of higher learning. N.D. Const. Art. IX, §12 provides for the permanent location of public institutions of the state of North Dakota. N.D. Const. Art. IX, §13 deals with the permanent location of other state public institutions not covered in the previous constitutional section. This constitutional provision also prohibits the establishment of any institution similar to "any one of those located by this article [Art. IX]... without a revision of this constitution." Finally, N.D. Const. Art. VIII, §6(l) lists those state educational institutions controlled and administered by the Board of Higher Education.

Nowhere in these constitutional provisions are there declarations as to the names of the institutions discussed. Therefore, I am of the opinion that the name of an institution of higher education listed within the constitution may occur without a constitutional amendment.

Attorney General's Opinion 83-7 based its conclusion that the name of an educational institution may be changed without a constitutional amendment upon past practices.

Past practice clearly demonstrates that both the Legislature and the State Board of Higher Education have, from time to time, established the name of the higher education institutions in the state.

North Dakota Attorney General's Opinion 83-7 at 20 (1983 N.D. Op. Att'y Gen. 17, 20). I agree with your conclusion that this reasoning is unfortunate in terms of a constitutional analysis. While past practices in terms of statutory construction and interpretation may be a relevant factor, it surely is not the primary reason for the conclusion reached by this opinion.

Instead, I believe the appropriate legal reasoning to be adopted in support of the conclusion reached by Attorney General Opinion 83-7 is that which I have previously outlined. The North Dakota constitutional provisions as to state institutions of higher education concern the location and character of those institutions and do not provide a specific name to be used by the institutions. As a result of the absence of constitutionally provided names for these institutions, I am of the opinion that such names may be changed without resort to a constitutional amendment.

I appreciate receiving a copy of the Legislative Council memorandum regarding N.D. Const. Art. IX, §13. The analysis of the memorandum and the decision of the North Dakota Supreme Court in State, ex rel. Miller v. Taylor, 133 N.W. 1046 (N.D. 1911) applies to the functions and character of institutions of higher education rather than to the names of those institutions.

Sincerely,

Nicholas J. Spaeth

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