

N.D.A.G. Letter to Gorder (May 23, 1991)

May 23, 1991

Honorable William E. Gorder
State Representative
1345 Lawler Avenue
Grafton, ND 58237

Dear Representative Gorder:

Thank you for your February 13, 1991, letter which was forwarded to me by the Speaker of the House, Representative Ron Anderson. You ask whether the amendments to House Bill No. 1046 comply with the second paragraph of N.D. Const. art. IV, § 13. The issue raised is whether the amendments changed the original subject matter of the bill. I apologize for the delay in responding.

Although you phrase the issue raised as whether the amendments were germane to the original subject matter, North Dakota Constitution art. IV, § 13 prohibits amendment of a bill "in a manner which changes its general subject matter." The subject of House Bill No. 1046 at the commencement of the legislative process, was conducting business on Sundays. The bill still removes the restrictions on conducting business on Sundays; however, the bill was amended by adding provisions which limit the ability of lessors to control their lessee's hours on Sunday and which require an employer to allow an employee one day of rest each week. It is self-evident that these amendments did not change the subject matter because they relate to conducting business on Sunday. The resolution of the issue you raise concerning sections 1, 2, 3, 8, and 9 of the bill which establish a rural development corporation and provide an appropriation for that development is more difficult, however.

The issue raised concerning these sections is a political question." Although difficult to define succinctly, a "political question" includes questions which require an inquiry into the standards necessary to appropriately enact legislation. Field v. Clark, 143 U.S. 649 (1892). Although I can provide you with information concerning the basic standards used in resolving a political question, I cannot definitively answer your question. See, Missouri Pacific Railway Co. v. Kansas 248 U.S. 276 (1919) (court may express the basic principles which apply). Nonjusticiability of "political questions" such as the one posed here is a function of the separation of powers doctrine. Baker v. Carr, 369 U.S. 186, 210 (1962); State ex rel. Spaeth v. Meiers, 403 N.W.2d 392 (N.D. 1987). The separation of powers doctrine allows that the "legislative, executive, and judicial branches are co-equal branches of government, . . . [each] supreme in its own sphere." Id. (Quoting N.D. Const. art. XI, § 26; State ex rel. Mason v. Baker, 288 N.W. 202 (1939)). "[T]he need for finality and certainty about the status of a statute contributes to judicial reluctance to inquire whether, as passed, [legislation] complied with all formalities." Baker, 369 U.S. at 214. Preservation of the doctrine of separation of powers is fundamental to our democratic

form of government and consequently the Legislature's determination on this issue should not be disturbed.

The determination that an amendment to a bill does not change the original subject matter is made by the Legislature when the bill is amended and passed. The rules of both the House and Senate provide that "[n]o bill may be amended during its pendency in the [respective body] in any manner that changes its general subject matter." S. Rule 331, H. Rule 331, Fifty-first North Dakota Legislative Assembly (1991). "The Senate's construction of its own rules applicable to the lawmaking process is a legislative function. Such legislative action which does not exceed constitutional authority is open only to political challenge." Meiers, 403 N.W.2d, 392, 394. Such matters are "internal matters capable of resolution by the legislative branch, which has nonjudicial remedies available to it within the political forum." Id.

The sections of House Bill No. 1046 you question were added by adoption of an amendment on the Senate floor. Senate Journal, Fifty-first Legislative Assembly, pp. 286-87 (January 31, 1991). By adopting the amendments to House Bill No. 1046, the Senate determined that the amendments did not change the general subject matter of the bill. When the Senate amended House Bill No. 1046 and passed the Bill from the Senate chambers, and when the House adopted those amendments by concurring in the Senate amendments and passing the bill as amended, the Legislature made the determination that the amendments did not change the general subject matter of the bill. The "political question" principle prevents me from second guessing that determination.

Although I cannot second guess the Legislature's actions in this matter, I am happy to provide you with the following discussion concerning the requirements of article IV, section 13, in case law interpreting it, its predecessors and similar provisions in other states.

The pertinent provisions of this section provide:

[N]o bill may be amended on its passage through either house in a manner which changes its general subject matter. No bill may embrace more than one subject, which must be expressed in its title; but a law violating this provision is invalid only to the extent the subject is not so expressed.

N.D. Const. art. IV, § 13.

When the title and "the whole of the Act" are considered, and they address the same subject at the beginning and the end of the bill's passage through the Legislature, the purpose of the bill has not been changed. Wilson v. City of Fargo, 186 N.W. 263 (N.D. 1921). In such case a contention that article II, section 58 (now article IV, section 13) has been violated, will fail.

Article IV, section 13, must be liberally construed. See, State v. Colohan 286 N.W. 888 (N.D. 1939) (construing predecessor of article IV, section 13). "[A]ll matters treated by

one piece of legislation [must] be reasonably germane to one general subject or purpose." SunBehm Gas, Inc. v. Conrad, 310 N.W.2d 766, 772 (N.D. 1981). "[L]egislation may include any matter naturally and reasonably connected with the subject of the act as expressed in the title." State ex rel. Weeks v. Olson, 259 N.W. 83, 85 (N.D. 1935).

Although not binding on North Dakota courts, decisions from other jurisdictions construing similar language are often instructive. In applying the single subject matter language of its own constitution, the Kansas Supreme Court stated:

To constitute plurality of subject, an Act must embrace two or more dissimilar and discordant subjects, that by no fair intendment can be considered as having any legitimate connection with or relation to each other. Within the meaning of the constitutional provision, matters which apparently constitute distinct and separate subjects are not so where they are not incongruous and diverse to each other.

State v. Reves, 666 P.2d 1190, 1195 (Ka. 1983) (quoting 73 Am. Jur.2d Statutes § 125).

Testimony on House Bill No. 1046 was replete with concern for economic development opportunities and the impact upon small towns and rural areas if business was conducted on Sunday. See, Hearing on H.B. 1046 Before House State and Federal Government Comm., 52nd N.D. Leg. (January 10, 1991) (Statements of Representative Bill Gorder, Eddie Dunn, John Olson, Bill Gackle, Jerry Dohn, Terry Harzienski, Bill Shalhoob, Ole Arsvold, Martin Valler, Linda Schumacher, James Nowatzki, and Roger Anderson). To both opponents and proponents, the elimination of the restrictions on doing business on Sunday impacted upon North Dakota's economy. Prior to amendment of H.B. 1046, the proponents testified that allowing the conduct of business on Sunday would aid economic development. Id. At the same hearing opponents testified the economies of small towns and rural areas would be adversely affected. The Legislature may have concluded sections 1, 2, 3, 8, and 9 would alleviate the problems opponents raised. Thus, the amendments are "not incongruous and diverse to each other." Reves at 1195.

Given the legislative history it is not unreasonable for the Legislature to have recognized a connection between allowing the conduct of business on Sundays and a resulting adverse impact on rural communities. Once this connection was identified, the Legislature was free to amend the bill in a manner it believed would provide relief from the perceived adverse impact.

Sincerely,

Nicholas J. Spaeth