

Office of the Attorney General
State of North Dakota

Opinion No. 81-133

Date issued: December 15, 1981

Requested by: Senator William Heigaard

--QUESTION PRESENTED--

Whether Senate Concurrent Resolution 4033, as passed by the 1981 Legislative Assembly, violates any provision of the Constitution of North Dakota.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that Senate Concurrent Resolution 4033, as passed by the 1981 Legislative Assembly, does not violate any provision of the Constitution of North Dakota.

--ANALYSIS--

Article IV, Section 23 of the Constitution of North Dakota provides that each regular session of the legislative assembly shall not exceed eighty natural days during the biennium. Not included in these eighty days is the organizational meeting, days spent in session at the call of the governor, or days engaged in impeachment proceedings. Days in regular session need not be consecutive.

Article IV, Section 41 of the Constitution of North Dakota states that no act of the legislative assembly shall take effect until July first after the close of the session unless there is a vote of two-thirds of the members present in each house declaring it as an emergency measure. An emergency measure takes effect upon passage and approval by the governor.

Article V, Section 5 of the Constitution of North Dakota provides that the governor has the authority to convene the legislative assembly 'on extraordinary occasions.'

Senate Concurrent Resolution 4033 provides for three ways in which those legislative assemblies following the adjournment of the 1981 Legislative Assembly may be called back into regular session. The first method allows the governor to call the legislature back into session. The second method involves members of the legislative council calling the legislature back into session. The third method provides for the legislative council to call the legislature back into session after receiving a petition signed by a minimum number of members of the House and Senate.

Senate Concurrent Resolution 4033 does not contravene or violate the Constitution of North Dakota. Although Article V, Section 5 of the Constitution states that the governor has the power to convene the legislative assembly on extraordinary occasions, there is no constitutional language suggesting this is an exclusive power. In Article IV, Section 27 of the Constitution, it is provided that each house has the power to determine its own rules or proceeding. A legislative procedure providing for the reconvening of a regular session is within the authority provided to the legislature by Article IV, Section 27 of the Constitution.

However, any continued regular session of the legislative assembly which results from Senate Concurrent Resolution 4033 must abide by and is subject to all other constitutional requirements. The legislative assembly cannot be continued in regular session if it has already exhausted the eighty natural days of the biennium provided for under Article IV, Section 23 of the Constitution. In addition, all acts passed by the reconvened legislative session take effect July first after the close of that session unless the measure is declared to be an emergency measure.

--EFFECT--

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

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