

Date Issued: April 8, 1983 (AGO 83-14)

Requested by: Larry W. Schoenwald, State Representative

- QUESTION PRESENTED -

Whether it is unlawful for the Legislative Assembly to appropriate moneys from the Vietnam Veterans' Bonus Bond Sinking Fund before the bonds are retired and all accrued interest fully paid.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that it is not unlawful for the Legislative Assembly to appropriate moneys from the Vietnam Veterans' Bonus Bond Sinking Fund before the bonds are retired and all accrued interest fully paid if such appropriations are only of moneys accumulated in excess of those needed to retire the bonds on schedule and to pay all accrued interest on time.

- ANALYSIS -

Article X, Section 13 of the North Dakota Constitution states in part:

Every law authorizing a bond issue shall provide for levying an annual tax, or make other provision, sufficient to pay the interest semiannually, and the principal within thirty years from the date of the issue of such bonds and shall specially appropriate the proceeds of such tax or of such other provisions to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provision discontinued until such debt, both principal and interest, shall have been paid . . ." (Emphasis supplied).

Article I, Section 18 of the North Dakota Constitution provides that "No . . . law impairing the obligations of contracts shall ever be passed." Similarly the United States Constitution Article I, Section 10 prohibits impairment of contract. Section 54-17.1-12 of the North Dakota Century Code presently states as follows:

54-17.1-12. APPROPRIATIONS AND TRANSFERS IRREPEALABLE. All appropriations and transfers provided to pay bonds issued under the provisions of this chapter and interest thereon, to the extent necessary to pay such bonds and interest, shall not be repealed until such bonds and interest are fully paid. (Emphasis supplied).

Section 54-17.1-13, N.D.C.C., states:

54-17.1-13. APPROPRIATION FOR BONDS. There is hereby appropriated the funds required for the payment of interest and principal of all bonds issued and sold under this chapter. (Emphasis supplied).

Originally the 'Vietnam Veteran Bonus' bonds were to be paid from the proceeds of a surtax. In 1975, however, the Legislative Assembly appropriated seventeen million dollars to redeem outstanding bonds and repealed the surtax. By this appropriation the Legislative Assembly made "other provision" for the payment of the interest and principal of the bonds in accordance with Article X, Section 13 of the North Dakota Constitution. Since 1975, the seventeen million dollar appropriation has been invested and has provided moneys for the sinking fund which are in excess of those needed to pay interest on time and retire the bonds. While the North Dakota Supreme Court has not directly considered the issue presented, the Court has recognized that the Legislative Assembly may take actions which effectively reduce the amount of money available to pay the principal and interest on bonds without violating either constitutional restrictions on repeals of appropriations to pay bond interest and principal or restrictions on impairment of contract. See Wernier v. Riebe et al. 296 N.W. 422 (N.D. 1941).

As originally enacted by the 1971 Legislative Assembly, section 54-17.1-12, N.D.C.C., provided as follows:

54-17.1-12. TAXES IRREPEALABLE. All taxes levied, appropriations, and transfers provided to pay bonds issued under the provisions of this act and interest thereon shall not be repealed until such bonds and interest are fully paid. (Emphasis supplied).

Subsequently this section of the act was amended to reflect the 1975 changes in the provisions for payment of the bond principal and interest other than by a tax and to reflect the intention of the 1979 Legislative Assembly that irrevocable appropriations were limited to only such appropriations as were necessary to pay the bonds and interest.

There is a clear distinction between the repeal and the amendment of a statute. An amendment of a statute alters or changes the statute while keeping it alive. The repeal of a statute destroys it. State ex rel., Strutz v. Baker, 299 N.W. 474 (N.D. 1941). Article X, Section 13 of the North Dakota Constitution prohibits repeal or discontinuation of appropriations for the full payment of bond principal and interest, but does not prohibit the amendment of such appropriations. Neither section 54-17.1-12 nor section 54-17.1-13, N.D.C.C., has been repealed by the Legislative Assembly. To the extent that legislative appropriations subsequent to 1975 have not reduced the sinking fund below that amount necessary to pay interest semiannually and to retire the bonds on schedule, such appropriations have neither repealed section 54-17.1-12 or 54-17.1-13, N.D.C.C., in fact, nor have such appropriations discontinued the provisions necessary for debt repayment as required by Article X, Section 13 of the North Dakota Constitution. Each Legislative Assembly has the independent authority to investigate and determine whether particular facts warrant an amendment of a previously enacted statute within constitutional limitations. Verry v. Trenbeath, 148 N.W.2d. 567 (N.D. 1967).

The general rule with regard to legislative actions which reduce sinking fund balances is that any action which lessens likelihood of payment or delays payment of interest or principal is an impairment of the obligation of contract between the state and its bondholders. See 64 Am. Jur.2d., Public Securities and Obligations, Section 407 (1972).

However, legislative actions which do not lessen the likelihood of repayment or delay payment of interest or principal do not impair the obligation of contract. See 64 Am. Jur.2d., Public Securities and Obligations, Section 408 (1972). Thus legislative appropriations of excess or surplus sinking funds may be made unless the security of the bondholders is endangered. See Flint v. Duval County, 170 S.2d. 587 (Fla. 1936); U.W. v. Paragold Special School District, 222 S.W. 368 (Ark. 1920); State ex rel., Freeling v. Howard, 171 P. 41 (Okla. 1918).

It is therefore my opinion that it is not unlawful for the Legislative Assembly to appropriate moneys from the Vietnam Veterans' Bonus Bond Sinking Fund before the bonds are fully retired and the accrued interest fully paid if such appropriations are only of sinking fund moneys accumulated in excess of those needed to pay all accrued interest and to retire the bonds on schedule and to the extent that such appropriations do not jeopardize the security of the bondholders.

- 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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