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INITIATED MEASURE CONSTRUCTION

The Property Tax Measure Review Committee requested information on court rulings involving initiated measures with "discrepancies." We understand the request to be focused on the rules of construction that have been applied by courts to resolve questions of ambiguity and voter intent and whether any perceived errors may be corrected. The committee did not identify any language in initiated constitutional measure No. 2 that might be considered "discrepancies."

INITIATED MEASURE CONSTRUCTION

The basic rules of statutory construction apply with equal force to legislation by the people through the initiative process. 42 Am. Jur. 2d *Initiative and Referendum* § 49. The fact that the measure being reviewed is an initiated constitutional amendment does not change the basis of judicial construction. The North Dakota Supreme Court has stated that principles of construction applicable to statutes are generally available to construction of the constitution. *McCarney v. Meier*, 286 N.W.2d 780 (N.D. 1979). In *Kelsh v. Jaeger*, 641 N.W.2d 100 (N.D. 2002), the North Dakota Supreme Court listed several principles for construing constitutional provisions, including:

- When interpreting the state constitution, our overriding objective is to give effect to the intent and purpose of the people adopting the constitutional statement.
- The intent and purpose of a constitutional provision is to be determined, if possible, from the language itself.
- We give words in a constitutional provision their plain, ordinary, and commonly understood meaning.
- When interpreting constitutional provisions, we apply general principles of statutory construction.
- We must give effect and meaning to every provision and reconcile, if possible, apparently inconsistent provisions.
- We presume the people do not intend absurd or ludicrous results in adopting constitutional provisions, and we therefore, construe such provisions to avoid those results.

Rules of interpretation for statutory provisions are described at 73 Am. Jur. 2d *Statutes* § 171 as follows:

It is generally regarded as permissible to consider the consequences of a proposed interpretation of a statute, where the act is ambiguous in terms and fairly susceptible of two constructions. Under such circumstances, it is presumed that undesirable consequences were not intended; instead, it is presumed that the statute was intended to have the most

beneficial operation that the language permits. A construction of which the statute is fairly susceptible is favored which will avoid all objectionable, mischievous, indefensible, wrongful, evil, and injurious consequences.

On the other hand, where a statute is so plain and unambiguous that it is not susceptible of more than one construction, courts construing the same should not be concerned with the consequences resulting therefrom. The undesirable consequences do not justify a departure from the terms of the act as written. **In such case, the consequences, if objectionable, can only be avoided by a change of the law itself, to be effected by the legislature, and not by judicial action in the guise of interpretation.** (emphasis supplied)

The North Dakota Legislative Assembly has set out in statute rules of interpretation to be used in statutory construction. Most of these rules were drawn from court decisions and are codified in North Dakota Century Code Chapter 1-02, which, among other things, includes the following provisions:

1-02-02. Words to be understood in their ordinary sense.

Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained.

1-02-05. Construction of unambiguous statute.

When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

1-02-06. Clerical and typographical errors.

Clerical and typographical errors shall be disregarded when the meaning of the legislative assembly is clear.

1-02-07. Particular controls general.

Whenever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision, unless the general provision is enacted later and it

is the manifest legislative intent that such general provision shall prevail.

1-02-30. Vested rights protected.

No provision contained in this code may be so construed as to impair any vested right or valid obligation existing when it takes effect.

1-02-38. Intentions in the enactment of statutes.

In enacting a statute, it is presumed that:

1. Compliance with the constitutions of the state and of the United States is intended.
2. The entire statute is intended to be effective.
3. A just and reasonable result is intended.
4. A result feasible of execution is intended.
5. Public interest is favored over any private interest.

1-02-39. Aids in construction of ambiguous statutes.

If a statute is ambiguous, the court, in determining the intention of the legislation, may consider among other matters:

1. The object sought to be attained.
2. The circumstances under which the statute was enacted.
3. The legislative history.
4. The common law or former statutory provisions, including laws upon the same or similar subjects.
5. The consequences of a particular construction.
6. The administrative construction of the statute.
7. The preamble.

CORRECTION OF ERRORS

With regard to correction of errors in laws, the only statutory provisions on the subject are:

46-03-10. Arranging and correcting laws.

In arranging the laws, memorials, and resolutions for publication, the legislative council shall make such corrections in

orthography, grammatical construction, and punctuation of the same as in its judgment are proper. When any law published in the code contains a reference to customary weights and measures, the equivalent weights and measures of the metric system must be added to the law as an insertion. When any such words or clauses are inserted, the same must be enclosed in brackets. In arranging the laws for publication and in publishing and maintaining the laws, the legislative council may change statutory references to numbers and letters to correct references to redesignated or repealed chapters, sections, or portions of sections and change statutory references to institutions, agencies, offices, and officers to be consistent with other statutory usage and constitutional provisions.

46-03-11. Publication of session laws and pocket supplements.

The secretary of state and the legislative council shall correct ministerial or clerical errors and supervise the publication of the session laws and pocket part supplements to this code in a manner and form prescribed by the legislative council, correlating each year's laws with this code.

CONCLUSION

It appears there is very little, aside from voter approval of a correction, which could be done to correct errors or discrepancies that may be discerned in an initiated constitutional amendment. If the words of the measure are not ambiguous, they must be given effect. If words are ambiguous, established rules of construction may be applied. If the plain meaning or construction of the words yields an undesirable result, the only option is to amend the law, which in this case would require approval of a majority of votes at a statewide election. It appears the only authority for corrections would apply to misspelling or grammatical or punctuation errors, and even in those cases extreme caution would be needed to avoid any substantive change.