



North Dakota Legislative Council

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CONSTITUTIONAL CONSIDERATIONS FOR LEGISLATIVE DRAFTERS

INTRODUCTION

To draft legislation effectively, a drafter must understand basic principles about the legislative function and constitutional provisions that have a direct bearing on drafting legislative documents. Many of the principles discussed in this memorandum are of a general nature, but several provide specific requirements that must be adhered to when drafting bills.

SEPARATION OF POWERS Three Branches

Both the United States Constitution and the Constitution of North Dakota provide for three branches of government--legislative, executive, and judicial. Each of the three branches has powers separate and distinct and, as far as practical, independent of each other. *State v. Kromarek*, 78 N.D. 769, 52 N.W.2d 713 (1952). Section 1 of Article III of the Constitution of North Dakota provides the legislative powers of this state are vested in the Legislative Assembly, consisting of a Senate and House of Representatives, except that power is shared with the people through the powers of the initiative, the referendum, and the recall. In *State ex rel. Eckroth v. Borge*, 69 N.D. 1, 283 N.W. 521 (1939), the North Dakota Supreme Court said the constitutional power of the initiative made the Legislative Assembly and the people coordinate legislative bodies with coextensive legislative power, and a law enacted by one is not superior to a law enacted by the other.

Distribution of Powers

A statement of general distribution of powers was added to the constitution in 1982 with the following sentence in Section 26 of Article XI: "The legislative, executive, and judicial branches are coequal branches of government."

As stated by the North Dakota Supreme Court in *Verry v. Trenbeath*, 148 N.W.2d 567 (N.D. 1967):

The legislative branch deliberates upon and decides the policies and principles to be adopted for the future and enacts them into law. The executive branch administers the law so enacted. The judicial branch construes the law, passes on its constitutionality, and determines, in accordance with the law, the rights and interests of the individual citizen.

This tripartite division of powers is a fundamental theory in state and federal government. . . .

Grants and Limitations

An understanding of the constitutional relationship between the branches of government is essential in any discussion of the separation of powers doctrine. The North Dakota Supreme Court, in *State ex rel. Johnson v. Baker*, 74 N.D. 244, 21 N.W.2d 355 (1945), said all governmental sovereign power is vested in the Legislative Assembly, except such as is granted to the other departments of government or expressly withheld from the Legislative Assembly by constitutional restrictions. The court further said constitutional provisions are in the nature of grants of powers to the executive and judiciary, but are limitations upon the power of the Legislative Assembly. In *State ex rel. Agnew v. Schneider*, 253 N.W.2d 184 (N.D. 1977), the court said the Legislative Assembly has plenary powers except as limited by the state constitution, the United States Constitution, and congressional Acts in matters in which the federal government is supreme. The court stated the principle more simply in *Stark v. City of Jamestown*, 37 N.W.2d 516 (N.D. 1949), explaining: "When it is asserted that action which is authorized by a legislative enactment is forbidden by the constitution, we do not look in the constitution for a grant of power to the legislature to enact such law, we look only to ascertain if it inhibited the legislature from enacting the law."

However, the powers of the Legislative Assembly are not without limitation. In *Ex parte Corliss*, 16 N.D. 470, 114 N.W. 962 (1907), the North Dakota Supreme Court said that because the Constitution of North Dakota provides

for the election of a Governor and an Attorney General, "[i]t seems too obvious for discussion that the framers of the Constitution, in providing for the election of these officers by the people, thereby reserved unto themselves the right to have the inherent functions theretofore pertaining to said offices discharged only by persons elected as therein provided." In *State v. Erickson*, 72 N.D. 417, 7 N.W.2d 865 (1943), the North Dakota Supreme Court relied on this language and held that the Legislative Assembly had no constitutional power to abridge the inherent powers of the Attorney General.

A 1994 North Dakota Supreme Court decision struck down the doctrine of sovereign immunity for the state even though the constitution provides that suits may be brought against the state "in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct." The court said this language merely authorizes the Legislative Assembly to waive or modify the common law doctrine of sovereign immunity. See *Bulman v. Hulstrand Construction Co., Inc.*, 521 N.W.2d 632 (N.D. 1994). As stated by Chief Justice Gerald W. VandeWalle in his dissent, "the majority arrogates to itself the authority to set aside the North Dakota Constitution because 'that doctrine no longer meets the needs of time.'"

In addressing whether an item veto by the Governor was valid, the North Dakota Supreme Court upheld an item veto that vetoed a directive or condition on expenditure of funds appropriated in a line item in another section of an appropriation bill. In *North Dakota Legislative Assembly v. Burgum*, 916 N.W.2d 83 (2018), the court stated, "[t]he Legislative Assembly may not insulate an item from veto by including it within a larger appropriation, funding that larger appropriation from multiple special funds, or failing to identify the funding source for the item."

Implied Exclusion

Because the branches derive their authority from the same constitution, there is an implied exclusion of each branch from the exercise of the functions of the others. *City of Carrington v. Foster County*, 166 N.W.2d 377 (N.D. 1969). In that case, the court struck down a law in which the Legislative Assembly attempted to give district court judges the power to appoint annexation officials, which is an executive function. In *State ex rel. Spaeth v. Meiers*, 403 N.W.2d 392 (N.D. 1987), the court said it exercises great restraint when requested to intervene in matters entrusted to the other branches of government.

North Dakota is not unique in separating the powers of the three branches of government and in prohibiting one branch from entrenching upon the powers of the other branches of government. The United States Supreme Court has on at least two occasions struck down unconstitutional congressional actions that infringed upon the role of the executive branch. In *I.N.S. v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764, 77 L. Ed. 2d 317 (1983), the United States Supreme Court found unconstitutional a section of the Immigration and Nationality Act which authorized one house of Congress, by resolution, to invalidate decisions of the executive branch of the federal government relating to certain immigration matters. In that case, the Court said legislative action must be performed by the constitutional requirements of passage of a measure by a majority of both houses and presentation to the President for possible veto. In *Bowsher v. Synar*, 478 U.S. 714, 106 S. Ct. 3181, 92 L. Ed. 2d 583 (1986), the Court considered a case involving the Gramm-Rudman-Hollings Act, which was intended to eliminate the federal budget deficit. The legislation required certain across-the-board budget cuts if the federal deficit exceeded certain maximums allowed by the law. The legislation gave considerable authority to the Comptroller General, an official nominated by the President from a list of three individuals recommended by the Speaker of the House of Representatives and the President Pro Tempore of the Senate and confirmed by the Senate. However, the Comptroller General was removable only at the initiative of Congress. The Court said:

To permit the execution of the laws to be vested in an officer answerable only to Congress would, in practical terms, reserve in Congress control over the execution of the laws.... The structure of the Constitution does not permit Congress to execute the laws; it follows that Congress cannot grant to an officer under its control what it does not possess.

The United States Supreme Court concluded that, because Congress had retained removal authority over the Comptroller General, that official could not be entrusted with executive powers. The Court said Congress could control the execution of its enactment by passing new legislation, but Congress could not retain control over the execution of the legislation passed by Congress and, therefore, Congress had intruded into the executive function.

In *American Crystal Sugar Co. v. Traill County Bd. of Com'rs*, 714 N.W.2d 851 (N.D. 2006), the North Dakota Supreme Court said taxation of property is a legislative function, not a judicial function, and the court's review of a local governing body's assessment of value for tax purposes is limited by the separation of powers doctrine. The court held "[a] reviewing court may not reverse the Board's decision simply because it finds some of the evidence more convincing; rather, the reviewing court may reverse only where there is such an absence of evidence or reason that the Board's decision is arbitrary, capricious, or unreasonable."

DELEGATION OF LEGISLATIVE POWER

Making Policy Versus Execution of Policy

An unlawful delegation of legislative power arises if a law attempts to give someone else, usually in the executive branch, the authority to make policy decisions without adequate guidelines. The Legislative Assembly must declare the policy of the law and must definitely fix the legal principles that control the action taken. See *MDU v. Johanneson*, 153 N.W.2d 414 (N.D. 1967).

A 1971 North Dakota Supreme Court decision provides a good review of the general law on the delegation of legislative power. In *Ralston Purina Co. v. Hagemeister*, 188 N.W.2d 405 (N.D. 1971), the authority of the Poultry Improvement Board to establish license fees was challenged as an unlawful delegation contrary to Section 3 of Article X of the Constitution of North Dakota. The board was given the authority to reduce the maximum license fees established by law if the board determined any or all of such fees or charges were excessive or unduly burdensome, or a lesser schedule of fees would produce all the income necessary.

The court's analysis of the delegation of powers is instructive:

It is elementary that except in those instances where it is expressly authorized to do so by the Constitution, as, for example, in the case of municipalities, **the Legislature may not delegate purely legislative powers to any other board, body, commission, or person.** However, although it may not delegate purely legislative power, it has been held that the Legislature may authorize others to do certain things and to exercise certain powers which are not exclusively legislative and which the Legislature itself might do but cannot because of the detailed nature of the things to be done....

Thus the power to ascertain certain facts, which will bring the provisions of a law into operation by its own terms, is not a delegation of legislative power. **If the law sets forth reasonably clear guidelines which will enable the administrative board to ascertain the facts, so that the law takes effect on such facts under its own provisions and not according to the discretion of the administrative board, the power so delegated is not legislative....**

Society in recent years has become more and more complex, and the courts have held that the vesting in other bodies of some powers ordinarily exercised by the Legislature so that this complex society may function, is not unconstitutional so long as the Legislature itself retains the right to revoke the power which it delegates. The power to make a law is legislative, but the conferring of authority as to its execution, which authority is to be exercised under the provisions of the law itself, as enacted by the Legislature, may be delegated. **The true distinction between the powers which the Legislature may delegate and those which it may not is to be determined by ascertaining whether the power granted gives authority to make a law or whether the power pertains only to the execution of the law which was enacted by the Legislative Assembly.** *Ralston Purina Co.*, 188 N.W.2d at 408. (emphasis supplied)

The court determined the license fee was a tax and upheld the law. Concerning the delegation of power question, the court stated:

Pure legislative power never may be delegated by the Legislature to a public officer, board, or commission. Legislative power which may not be delegated includes a determination of whether the law should be enacted, the fixing of a time when the law shall take effect, and a designation of the persons to whom the provisions of the law shall apply. In other words, legislative power which may not be delegated is the power to make a complete law. However, if the law as enacted by the Legislative Assembly furnishes a reasonably clear policy or standard of action which will guide and control the public officer, commission, or board in determining the facts or situations to which the provisions of the law shall apply, so that the law will take effect upon the existence of such facts or situations by virtue of its own terms and not according to the whim, notion, or fancy of the administrative officer, commission, or board, then the power which is delegated by the Legislature to such officer, commission, or board is not legislative, but is administrative....

It is only where a statute purports to vest arbitrary discretion in a public officer, commission, or board, without establishing rules for the guidance of such public officer, commission, or board, that a statute will be declared unconstitutional. *Ralston Purina Co.*, 188 N.W.2d at 408.

In *Nord v. Guy*, 141 N.W.2d 395 (N.D. 1966), the North Dakota Supreme Court found a 1965 Act of the Legislative Assembly authorizing the construction of buildings on college campuses but leaving it up to the State Board of Higher Education to determine where those buildings would be built to be an unlawful delegation of legislative authority.

The North Dakota Supreme Court has also stated "that even though there are three branches of government, government cannot be divided into 'watertight compartments,' and administrative agencies often perform acts which are partly legislative, partly executive, and partly judicial...." *Southern Valley Grain Dealers Assn. v. Bd. of Cty. Com'rs*, 257 N.W.2d 425 (N.D. 1977).

The North Dakota Supreme Court implied a statute giving the Game and Fish Department authority to determine whether to recognize another state's suspension of hunting privileges to suspend a person's hunting privileges in this state may be an unlawful delegation of legislative power. *Gray v. North Dakota Game and Fish Dept.*, 706 N.W.2d 614 (N.D. 2005).

Modern View on Delegation

In 1985, the North Dakota Supreme Court upheld a statute granting the State Historical Board the authority to put historical sites on a registry. In *Stutsman County v. State Historical Soc. of North Dakota*, 371 N.W.2d 321 (N.D. 1985), the court held this power did not give the board the authority to make law but only to execute the law.

In *North Dakota Council of School Administrators v. Sinner*, 458 N.W.2d 280 (N.D. 1990), the North Dakota Supreme Court indicated the state follows the modern view that recognizes, in a complex area, it may be necessary and appropriate to delegate in broad and general terms if adequate standards and procedural safeguards exist. This case, which involved the interpretation of a statute that gave the Director of the Budget authority to control the rate of expenditures by state agencies through a system of allotments, upheld the statute's constitutionality. The court held the statute requires the Director of the Budget to determine that one or more of four enumerated factors is present before an allotment reducing an appropriation may be made. However, a specially concurring opinion noted the present statute is "so broad and vague as to be alarmingly close to the edge of what is a legally acceptable delegation of legislative authority." The specially concurring opinion points out the statute allows the Director of the Budget to make allotments based upon estimated revenues, but there are no standards by which the Director of the Budget is guided as to the extent of the reductions or the obligation to restore those reductions if revenue estimates improve.

The North Dakota Supreme Court concluded it was an unlawful delegation to give one person (an incumbent senator placed in a legislative district with another incumbent) the power to stop an election from being required. *Kelsh v. Jaeger*, 641 N.W.2d 100 (N.D. 2002).

Delegation to a Legislative Committee

In *Burgum*, 916 N.W.2d 83, the North Dakota Supreme Court concluded a delegation to the Budget Section of the authority to approve Water Commission transfers of funds was a violation of the nondelegation doctrine because the delegation lacked any guidelines. A minority of the justices also asserted the delegation was a separation of powers violation because the "Legislative Assembly was not attempting to delegate its core legislative power to the executive branch, but to retain control over executing a law after it is enacted by delegating power to a committee of its own members." Those justices further stated fact finding and discretionary decisionmaking with respect to administering appropriated funds after the law is enacted is an executive function.

STATE CONSTITUTIONAL REQUIREMENTS

Background

Numerous provisions of the Constitution of North Dakota provide specific requirements relating to the drafting of legislation. For the most part, these provisions are found in Article IV, the legislative branch article. Many of the provisions of Article IV relating to bill drafting are found in Section 13.

Bills Versus Resolutions

One provision of Section 13 provides no law may be enacted except by a bill passed by both houses. This provision is significant in that only a bill, as contrasted to a resolution, may become law in this state. In some states and the federal government, certain types of resolutions must be subject to approval or veto by the executive branch and have the force of law. The following definition of the word "resolution" appropriately describes the distinction in this state:

The chief distinction between a "resolution" and a "law" is that the former is used whenever the legislative body passing it wishes merely to express an opinion as to some given matter or thing and is only to have a temporary effect on such particular thing, while by a "law" it is intended to permanently direct and control matters applying to persons or things in general. *Black's Law Dictionary, 5th Ed. Rev.*, "Resolution," at p. 1178 (1979).

Thus, if the intent is to compel action, a bill should be used instead of a resolution. An exception is matters dealing only with operation of the legislative branch, such as a resolution directing the Legislative Council to conduct a study or a resolution establishing the compensation of legislative session employees.

General Subject Matter

Section 13 provides no bill may be amended to change its general subject matter.

Single Subject Rule

Another provision of Section 13 which has received a good deal of attention by the North Dakota Supreme Court is the sentence that provides: "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." The general rule deducible from the court decisions is that the Act is valid if all the provisions of an Act are germane to the subject expressed in the title. See *Sunbehm Gas, Inc. v. Conrad*, 310 N.W.2d 766 (N.D. 1981); *Kessler v. Board of Ed. of City of Fessenden*, 87 N.W.2d 743 (N.D. 1958).

Stated differently, this rule means legislation may include any matter naturally and reasonably connected with the subject of the Act as expressed in the title. *Lapland v. Stearns*, 54 N.W.2d 748 (N.D. 1952); *State ex rel. Gammons v. Shafer*, 63 N.D. 128, 246 N.W. 874 (1933); *Thompson Yards v. Kingsley*, 54 N.D. 49, 208 N.W. 949 (1926).

The North Dakota Supreme Court has established rules to be followed in construing the constitutional requirements for bill titles:

1. The law will not be declared unconstitutional on account of the defect pointed out in the title, unless it is clearly so.
2. The title will be liberally construed, and not in a strict or technical manner.
3. If the provisions of the Act are germane to the expressions of the title, the law will be upheld.
4. Conflict with the constitutional provision must be clear and palpable, and, in case of doubt as to whether the subject is expressed in the title, the law will be upheld. See *City of Mandan v. Nichols*, 62 N.D. 322, 243 N.W. 740 (1932); *State ex rel. Poole v. Peake*, 18 N.D. 101, 120 N.W. 47 (1909).

The purpose of the title requirements of the constitution has been described as to apprise the public, as well as the members of the Legislative Assembly, of the purpose and object of the legislation. See *Dornacker v. Strutz*, 71 N.D. 449, 1 N.W.2d 614 (1941).

Titles of bills are important for practical reasons. For example, they are used by the press for short press items regarding bills introduced and committee hearings. They are also used as a basis for indexing purposes in the bill status reporting system. Most importantly, they are used by legislators and the public to gain an understanding of a bill's contents.

The importance of this constitutional provision was expressed by the North Dakota Supreme Court in the 1978 case of *North American Coal Corp. v. Huber*, 268 N.W.2d 593, in which the court said: "We are limited in our interpretation of the Act to those subjects expressed in the title." Thus, the drafter should be sure there are no major omissions in a title. However, this should not necessarily lead to a detailed list of everything in the bill, but may motivate the drafter to use general language rather than specific language. In Michigan, a state with a similar constitutional provision, the Michigan Supreme Court stated the title of an Act is not required to be an index of all its provisions. *Computer Tax Ass'n of Metropolitan Detroit v. Detroit*, 311 N.W.2d 449 (Mich. 1981).

The title and single subject requirements of Section 13 of Article IV of the Constitution of North Dakota were analyzed most recently by the North Dakota Supreme Court in *Board of Trustees of The North Dakota Public Employees Retirement System v. North Dakota Legislative Assembly*, 2023 ND 185, 996 N.W.2d 873, as clarified, (Oct. 12, 2023). In this case, the court analyzed whether the title and substance of the Office of Management and Budget's appropriations bill violated Section 13. In its opinion, the court noted the title and single subject requirements of Section 13 are distinct, and the section can be violated in more than one way, including: (1) if a bill embraces two subjects, and both are fully expressed in the title; (2) if a bill embraces more than one subject and only one subject is expressed in the title; and (3) if an act embraces one subject and that subject is not expressed in the title.

In the case, the court held the title and substance of the Office of Management and Budget's appropriations bill violated Section 13 because the bill embraced more than one subject. The court reasoned the legislation was

introduced as a general appropriations bill, and the changes to the title and substance of the bill made by both legislative bodies, including the addition of a provision related to the process for board member appointments and compensation, were not germane to appropriating funds for state government operations. The court reasoned, because the provisions were not germane, the bill embraced more than one subject in violation of Section 13, and the bill was therefore invalid in its entirety.

While the court provided minimal guidance with respect to determining whether a provision is germane for purposes of Section 13 specifically, the court cited case law in other states with similar constitutional single subject provisions as support for the court's decision to invalidate the bill. The case law from other states stood for the proposition that attaching substantive legislation to a general appropriations bill is unconstitutional under a constitutional single subject provision if the substantive legislation did not directly relate to the subject of the appropriation or have a natural connection to that subject.

Incorporation by Reference

Section 13 also provides a bill may not be amended, extended, or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions. It should be emphasized this constitutional requirement refers to the incorporation by reference of one bill in another bill. (Note emphasis on word "bill.") This should not be confused with the incorporation by reference of another law or regulation of this state or another governmental entity. See *State v. Julson*, 202 N.W.2d 145 (N.D. 1972), holding that the Legislative Assembly may adopt by reference an existing law or regulation of the United States. On the other hand, the Legislative Assembly does not have the authority to adopt future amendments by reference, except in the case of future amendments to federal income tax laws, as specifically provided by the 1966 amendments to Section 3 of Article X of the Constitution of North Dakota.

Effective Dates and Emergency Clauses

Section 13 provides the effective date for measures passed during a regular 80-day session is August 1, unless the measure is an appropriation measure or tax measure, in which case the effective date is July 1.

A measure may become effective on a date after the date noted in Section 13 if specified in the law, or on a date before the date noted in Section 13 if the Legislative Assembly declares the measure, or part of the measure, to be an emergency measure and the measure passes by a vote of two-thirds of the members elected to each house.

An emergency measure takes effect upon the filing with the Secretary of State or on a date specified in the measure.

For any measures passed during a reconvened session and filed between August 1 and January 1, the effective date is 90 days after filing.

A law enacted during a special session of the Legislative Assembly takes effect on the date specified in the Act.

To further clarify the issue, North Dakota Century Code Section 1-02-42 was enacted in 1995 to provide:

1-02-42. Effective dates of legislation - Rules of construction.

In determining the effective date of any law enacted by the legislative assembly, a "measure" includes the entire contents of a legislative act, unless the legislative assembly specifically provides within the act that only a portion of the act is an emergency, appropriation, or tax measure. Unless a different date is specified in a measure, the measure takes effect on July first after its filing with the secretary of state if:

1. Any portion of the measure provides an appropriation for support and maintenance of state departments and institutions; or
2. Any portion of the measure:
 - a. (1) Provides for an enforced contribution for public purposes which is not dependent upon the will or consent of the person taxed;
 - (2) Imposes a fee for any purpose; or
 - (3) Authorizes a public official or entity to determine the level of a fee for any purpose; and
 - b. Changes any statutory factor that determines the amount of a taxpayer's liability for the contribution or fee, including a full or partial exemption or credit.

Special or Local Laws

Section 13 of Article IV provides:

Except as otherwise provided in this constitution, no local or special laws may be enacted, nor may the legislative assembly indirectly enact special or local laws by the partial repeal of a general law but laws repealing local or special laws may be enacted.

This constitutional provision was used as one of the challenges to the state's Sunday closing law in *Best Products Co., Inc., et al. v. Spaeth*, 461 N.W.2d 91 (N.D. 1990). The court said the special laws language constrains laws relating only to particular persons or things of a class, as distinguished from a general law that applies to all things or persons of a class. The court held the Sunday closing law as it existed at that time had the required uniform effect because every business of a certain type and every commodity of a certain kind was regulated in order to achieve an accepted legitimate governmental purpose. Thus, the court concluded that the Sunday closing law was not a special law prohibited by the constitution.

The court has stated the "common inquiry in our special law cases is whether statutory classifications are written in general terms, rather than applying to particular persons or things, and if written in general terms, whether the classification '**close[s] the door against accessions to the class.**'" *Teigen v. State*, 749 N.W.2d 505 (N.D. 2008). (emphasis supplied)

A statute that limits the liability of ski facility operators does not violate the local and special law prohibition because the statute applies to all persons operating a skiing facility within the state. *Bouchard v. Johnson*, 555 N.W.2d 81 (N.D. 1996).

Another limitation on the authority of the Legislative Assembly to enact bills is found in Section 10 of Article XII, which prohibits legislation to construct and operate street railroads and certain utilities in cities without the consent of local authorities.

Supersession by Court Rules

A constitutional provision in the Judicial Article, Section 3 of Article VI, provides the Supreme Court has authority to promulgate rules of procedure to be followed by all the courts of this state. That section has been used to invalidate a statute that conflicted with a procedural rule. *State v. Hanson*, 558 N.W.2d 611 (N.D. 1996).

Appropriation Requirements

Section 12 of Article X provides all public moneys are to be paid out and disbursed only pursuant to appropriation first made by the Legislative Assembly. The North Dakota Supreme Court has interpreted the word "appropriation" as used in the constitution to mean "the setting apart of a definite sum for a specific object" and has determined if there is not a specific and direct appropriation of a definite sum there is no appropriation. *Menz v. Coyle*, 117 N.W.2d 290 (N.D. 1962); *Campbell v. Towner County*, 3 N.W. 822, 71 N.D. 616 (1941). Based on these decisions, appropriations must be carefully drafted to meet this constitutional test. However, in *Gange v. Clerk of Burleigh County District Court*, 429 N.W.2d 429 (N.D. 1988), the court held a continuing appropriation to be a valid appropriation, and a continuing appropriation does not bind future legislatures because it is continuing only if future legislatures choose not to repeal or modify it.

FEDERAL CONSTITUTIONAL PROVISIONS

General - Reservation Clause

A legislative drafter must be aware of federal constitutional provisions and general constitutional limitations under the Bill of Rights and other amendments to the Constitution. Perhaps most important is the 10th Amendment, which provides that all powers not delegated to the United States nor prohibited to the states are reserved to the states.

Supremacy Clause

Another key limitation on state legislatures is Article 6 of the United States Constitution, known as the Supremacy Clause, which provides in part:

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; anything in the constitution or laws of any state to the contrary notwithstanding.

In *Consolidated Telephone v. Western Wireless*, 637 N.W.2d 699 (N.D. 2001), the North Dakota Supreme Court said an express preemption of state law occurs when Congress specifically declares in a statute that it intends to

preempt state law in a particular field. In *Northwest Airlines, Inc. v. State Bd. of Equalization*, 358 N.W.2d 515 (N.D. 1984), the court did not cite the supremacy clause but still held that a state statute was preempted by a federal law. The North Dakota Supreme Court has identified three forms of federal preemption--express preemption, field preemption, and conflict preemption. *State ex rel. Stenehjem v. Freeeats.com*, 712 N.W.2d 828 (N.D. 2006).

Powers Granted to Congress

Section 8 of Article 1 lists the powers granted to Congress. There is an implied limitation on the power of the states to enact laws in areas reserved to the federal government. Included in the list of reserved powers is the regulation of interstate commerce, bankruptcy, and immigration.

Full Faith and Credit

Article 4 requires each state to give full faith and credit to the laws and judicial proceedings of other states. In addition, this article requires each state give all privileges and immunities to citizens of other states. This article also provides for extradition proceedings between states upon the demand of a state's governor and guarantees to every state a republican form of government.

Limits on State Sovereignty

The United States Constitution contains numerous express limitations on state sovereignty. Section 10 of Article 1 declares a state may not:

1. Enter into any treaty, alliance, or confederation.
2. Grant letters of marque and reprisal.
3. Coin money.
4. Emit bills of credit.
5. Make anything but gold and silver coin a tender in payment of debts.
6. Pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts.
7. Grant any title of nobility.
8. Without consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws.
9. Without consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war.

Congressional Elections

Section 4 of Article 1 limits state control of elections for United States senators and representatives by requiring state legislation be subject to regulations passed by Congress. Article 6 places additional limitations on the ability of states to determine qualifications of senators and representatives in Congress by providing no religious test shall ever be required as a qualification to any office or public trust under the United States.