



North Dakota Legislative Council

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ANALYSIS OF ATTORNEY GENERAL OPINION REGARDING VETO ERRORS

This memorandum provides an analysis of the opinion ([appendix](#)) issued by the Attorney General on June 10, 2025, regarding the errors in the Governor's veto of Senate Bill No. 2014 (2025).

BACKGROUND

On May 19, 2025, the Governor sent a transmittal letter, an objection letter, and the marked up and signed Senate Bill No. 2014 (2025), the Industrial Commission budget for the 2025-27 biennium, to the President of the Senate. The bill returned by the Governor containing the Governor's redlining of items he vetoed indicated the removal of all of Sections 7 and 31. The Governor later characterized his marking of a large red "X" over, and red defined border around, Section 7 in the returned bill as "an honest mistake." The Governor then requested the Attorney General provide an opinion as to whether the legally operative scope of his veto was constituted by the marked-up bill or the objection letter. N.D. Op. Att'y Gen. No. 2025-L-02, 1 (2025).

In response to the Governor's request, the Attorney General concluded the written statement of the Governor's objections is the legally operative communication for purposes of defining the vetoed provision. N.D. Op. Att'y Gen. No. 2025-L-02, 1 (2025). In his interpretation of the Governor's statement of objections, the Attorney General concluded that after the language the Governor intended to be vetoed is removed, Section 7 of Senate Bill No. 2014 (2025) reads as follows:

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$10,000,000, which the office of management and budget shall transfer to the housing incentive fund for homeless programs, during the biennium beginning July 1, 2025, and ending June 30, 2027. The appropriation under this subsection is considered a one-time funding item.
2. The office of management and budget shall transfer the sum of \$25,000,000 from the strategic investment and improvements fund to the housing incentive fund for housing projects and programs during the biennium beginning July 1, 2025, and ending June 30, 2027.

N.D. Op. Att'y Gen. No. 2025-L-02, 6-7 (2025).

ANALYSIS

Constitutional Distinction Between a Vetoed Bill and a Vetoed Item

The authority of the Governor to veto an item within an appropriation bill is found under Section 9 of Article V of the Constitution of North Dakota, which states, in pertinent part, "The governor shall return for reconsideration any **vetoed item** or bill, with a written statement of the governor's objections, to the house in which it originated." (**emphasis supplied**). The plain language of the constitution specifically distinguishes between the veto of an "item" and the veto of a "bill." The opinion issued by the Attorney General acknowledged that to effectuate a veto, the constitution requires the Governor to return the vetoed item or bill, with a written statement of the Governor's objections. The opinion states: "Together, those two documents comprise the constitutionally mandated veto package."¹ N.D. Op. Att'y Gen. No. 2025-L-02, 2-3 (2025). However, the opinion focuses more on the use of the word "return" to argue the bill may be returned with no markings regardless of the type of veto, while failing to recognize that the constitution distinguishes between the veto of an item and the veto of a bill. The distinction between whether a bill or an item within a bill is being vetoed is significant because it triggers different requirements for the form in which the bill must be returned by the Governor. To conclude different requirements are not triggered by the constitution distinguishing between a bill and an item would ignore the North Dakota Supreme Court's direction for constitutional interpretation, rendering the distinction meaningless. *See Kelsh v. Jaeger*, 2002 ND 53, ¶ 7, 641 N.W.2d 100 (stating the intent and purpose of a constitutional provision is to be determined, if possible, from the language itself.)

¹ The term "veto package" does not appear in Article V of the Constitution of North Dakota, which sets forth the constitutional authority of the Governor's executive power, nor does it appear elsewhere in the constitution.

When a Governor vetoes the entirety of a bill, the bill, without the Governor's signature, is returned to the house of origin with the Governor's objection letter. The return of the bill without the Governor's signature clearly indicates the Governor's disapproval of the entire bill. When the Governor vetoes an item within a bill, the Governor signs the bill, indicating the Governor's approval of all of the items in the bill except for those items crossed out or "erased" by the Governor. This action is consistent with the practice of past governors. The failure of the opinion to acknowledge the distinction between the veto of an item and the veto of a bill leads to a flawed conclusion that "Governors may return vetoed items or bills exactly as they were passed by the legislature (*i.e.*, without any markings) along with their written statements of objections, and the validity of the vetoes would not be impacted." N.D. Op. Att'y Gen. No. 2025-L-02, 3 (2025). This conclusion is inconsistent with the intent of Section 9 of Article V of the Constitution of North Dakota, judicial precedent, and the practice of former governors.

The flaw in not recognizing this distinction, and proclaiming the objection letter as the controlling document, becomes abundantly clear when considering the lack of any legal requirement for the Governor's objection letter to quote or specifically identify the text being removed in an item veto. The opinion is silent as to any requirement for the Governor's objection letter to expressly identify which words, sentences, or paragraphs the Governor is removing from a bill. Applying the opinion to guide the manner in which future item vetoes are executed would allow a Governor to return an unmarked, signed bill with only the Governor's objection letter, while setting no parameters concerning the specificity by which the objection letter must describe the language being removed. Allowing an objection letter to provide only a general reference to what is being vetoed, absent any bill markings or legal requirement to provide the quoted language from the bill, seems extremely risky when previous item vetoes have removed as few words as "any portion of" within a paragraph.²

The opinion leaves the interpretation of future ambiguous objection statements to the discretion of the Attorney General, allowing the Governor and the Attorney General to resolve ambiguity by agreement. This conclusion is inconsistent with recent North Dakota Supreme Court precedent. See *North Dakota Legislative Assembly v. Burgum*, 2018 ND 189, ¶ 9, 916 N.W.2d 83 (concluding the governor may not subsequently modify his veto power by agreeing with an attorney general opinion and "[t]o conclude otherwise would leave the law in an indeterminate state subject to the discretion of the governor and attorney general"). In *Burgum*, the court stressed that issues involving "the constitutionality of partial vetoes and the limits of the legislature's power as it approaches the powers properly exercised by the executive branch" concern "the balance of powers between the legislative and executive branches of government" and "actions which tend to undermine this separation are of great public concern." *Id.* ¶ 10.

Designating the Attorney General as the individual to clarify ambiguities is concerning considering the ambiguity that remains after the Attorney General has issued his opinion. In the opinion, the Attorney General restates the language of Section 7 of Senate Bill No. 2014 as it will read after the \$150,000 passthrough grant language is removed. N.D. Op. Att'y Gen. No. 2025-L-02, 6-7 (2025). However, the Attorney General does not retain and overstrike the sentence relating to the \$150,000 passthrough grant, he omits it entirely. What remains is a directive to appropriate \$10,000,000 in subsection 1 of Section 7 and \$25,000,000 in subsection 2 of Section 7. Without the overstrike of the language referencing the \$150,000 passthrough grant, or even so much as a footnote clarifying that the amount to be appropriated under subsection 1 is \$9,850,000, rather than \$10,000,000, confusion remains as to the effect of the veto and the amount to be disbursed under subsection 1. A plain reading of the Section 7 language as restated by the Attorney General directs the appropriation of the full \$35,000,000, notwithstanding prior caselaw that requires the amount of any vetoed item to be deducted from the total amount appropriated.³ The opinion's failure to provide clarity is evidenced by the Governor's own restatement of the Attorney General's conclusions in the Governor's June 11, 2025, press release which states, "\$35 million in housing funds will be disbursed as approved by the state Legislature after a North Dakota Attorney General's opinion found that the governor's written objections in a line-item veto of Senate Bill 2014 clearly did not target the housing funds."⁴

The North Dakota Supreme Court has made abundantly clear that "from the early days of statehood it was understood that the subtraction of vetoed items from larger totals was the legal result of an item veto." *Burgum*, 2018 ND 189, ¶ 22. In *Burgum*, the Court considered the legal effect of a workplace safety item veto on the larger

² See veto letter accompanying the partial veto of Senate Bill No. 2003 (2017) with statements including: "That portion of paragraph 3, Section 18 that reads 'any portion of' is vetoed", "Paragraph 3(c) of Section 24 is vetoed", "The second sentence under Section 32 is vetoed", and "The portion of paragraph 39 that reads 'and for credit hours completed at the school' is hereby vetoed."

³ See *Burgum*, 2018 ND 189, ¶ 23 (citing *State ex rel. Sandaker v. Olson*, 65 N.D. 561, 260 N.W. 586, 587 (1935)) ("Although the Governor lacks the power to alter the mathematical calculations that result from vetoed items, any vetoed items are as a matter of law subtracted from any larger amount in which they are included.")

⁴ Press Release, Office of the Governor, Armstrong: Housing funds to move forward after Attorney General finds line-item vetoed bill is valid (June 11, 2025), <https://www.governor.nd.gov/news/armstrong-housing-funds-move-forward-after-attorney-general-finds-line-item-vetoed-bill-valid>.

appropriation in which the item was included, holding "The Workplace Safety Veto was within the Governor's item veto authority and the result of the veto is that the larger appropriation in which the item was included is as a matter of law reduced by the amount of the item." *Id.* ¶ 28. Despite the Attorney General opinion's disregard for controlling precedent, the correct amount to be disbursed as a matter of law under subsection 1 of Section 7 of Senate Bill No. 2014 is \$9,850,000.

Omission of Controlling Precedent

Notably absent from the opinion is any reference to controlling precedent contradictory to the opinion's conclusion.

The opinion's conclusion that the Governor is not required to mark up the bill before sending it back to the house of origin because the objection letter is the "legally operative document" is a deviation from prior opinions issued by the Attorney General. N.D. Op. Att'y Gen. No. 2025-L-02, 7 (2025). In a 2014 opinion, Attorney General Wayne Stenehjem opined on the legal effect of the objections included in a Governor's veto message. N.D. Op. Att'y Gen. No. 2014-L-14 (2014). The Attorney General noted a Governor's statement of intent in a veto message should be given "due consideration in determining the intent of legislation, just as committee hearing minutes, testimony, and other forms of legislative history are considered." *Id.* at 3. However, the Attorney General stated, "... a statement of intent included in a Governor's veto message stating which line item to be tapped first is entitled to due consideration, **but is not a matter of binding legal authority.**" *Id.* (emphasis supplied). Despite the conflicting statements, the 2014 opinion was not discussed in the Attorney General's most recent opinion. If the purpose of the Attorney General's opinion was to deviate from the 2014 opinion, it seems the Attorney General would have expressly overturned the precedent established in the 2014 opinion. Because the Attorney General failed to address this adverse opinion, it appears there are two conflicting opinions regarding the legal weight to be afforded a Governor's objection letter.

Also omitted from the opinion is any reference to *North Dakota Legislative Assembly v. Burgum*, despite the decision being the most recent North Dakota Supreme Court case to address a partial item veto. 2018 ND 189, 916 N.W.2d 83. In this case, after adjournment of the regular session of the 65th Legislative Assembly, the Governor vetoed five items in four appropriation bills by striking through certain language in the bills before signing them into law. When discussing the item veto powers granted to the Governor under Section 9 of Article V of the Constitution of North Dakota, the court stated, "The veto power is an eraser, not a pencil. The Governor may strike words or numbers in a bill, but he may not insert them." *Burgum*, 2018 ND 189, ¶ 23. The assertion that the Governor is not required to mark up the bill before sending it back to the house of origin is in direct conflict with this principle. By looking at the plain text of the opinion, it is logical to assume that the phrase "the Governor may **strike words or numbers in a bill**" anticipates the actual bill to be marked up. *Id.* (emphasis supplied). If the Governor does not mark up vetoed items in an appropriations bill, is the Governor really "erasing" the vetoed items in the bill? One could argue that, by only looking at the Governor's written objections, the Attorney General is requiring the Legislative Assembly to look to the Governor's "penciled" and editorialized letter to ascertain the scope of the veto. Because in the *Burgum* case the court held the veto power is an eraser, not a pencil, the reasoning of the opinion ignores controlling precedent.

Inconsistencies with Attorney General Opinions and Judicial Precedent

The opinion also contains inconsistent conclusions. Initially, the Attorney General discusses how the fundamental principle in constitutional construction is to give words their *natural and ordinary meaning*. N.D. Op. Att'y Gen. No. 2025-L-02, 2 (2025) (quoting *SCS Carbon Transp. LLC v. Malloy*, 2024 ND 109, ¶ 19, 7 N.W.3d 268, 276, as amended (Jan. 9, 2025)). However, the Attorney General then refers to the vetoed item or bill as an "elective visual aid" apparently supplying the constitutional drafters with additional language and meaning, disregarding "the intent and purpose of the people who adopted the constitutional provision". *SCS Carbon Transp.*, 2024 ND 109, ¶ 19. Characterizing the vetoed item or bill as "elective" is inconsistent with the Attorney General's premise that the vetoed item or bill, along with the written statement of objections, "comprise the constitutionally mandated veto package." N.D. Op. Att'y Gen. No. 2025-L-02, 3 (2025).

Rather than relying on the recent North Dakota Supreme Court precedent in the *Burgum* decision, the opinion instead defers to a Colorado Supreme Court decision holding a vetoed bill without a statement of objections is insufficient because the Legislative Assembly must be informed of a governor's reasoning to consider whether to override the veto. N.D. Op. Att'y Gen. No. 2025-L-02, 2 (2025) (quoting *Romer v. Colorado Gen. Assembly*, 840 P.2d 1081, 1083 (Colo. 1992) (en banc)). Like Colorado, the Constitution of North Dakota requires both the "vetoed item" with a "written statement of the governor's objections" to be returned to the house of origin. N.D. Const. art. V, § 9. The absence of either document would render the Governor's action constitutionally insufficient. However, the fact that the rationale for supplying written objections is supported by sound reasoning does not answer Governor Armstrong's question: which document constitutes the legal veto? The *Romer* court answers the question

by concluding, "the act of vetoing a bill itself manifests the governor's 'disapproval' of the bill." *Romer*, 840 P.2d at 1084. However, the Supreme Court of Colorado separately requires the accompanying written objections to provide some reasoning, meeting a minimal and objective standard, to explain the veto rather than enshrining the statement of objections as the legally operative document over the bill itself as asserted in the Attorney General's opinion. See *id.* at 1083-85.

The purpose of the Governor marking up the bill when executing an item veto is to provide a clear representation of the specific provisions being objected to. The importance of the bill markup is evidenced not only by the precedent set by previous governors, but also by the court in *State ex rel. Sandaker v. Olson*, 65 N.D. 561, 260 N.W. 586, 588 (1935). In *Sandaker*, the court dissected the executive's constitutional veto power for purposes of establishing the time at which disapproval occurs. The veto timeline was a key issue in the case, because the petitioner argued the veto was void due to a gubernatorial timing error. The court determined "disapproval" occurs when the executive acts, the evidence of which "must be indicated specifically **on the bill itself** with reference to the particular item or items involved." *Id.* (**emphasis supplied**). The court's determination that disapproval occurs when the executive acts, by physically marking on the bill itself, was critical in upholding the veto's validity. The Attorney General's insinuation the court's analysis of "disapproval" in the *Sandaker* case was mere dicta is illogical.

Misguided Comparisons

In an attempt to analogize the purpose of legislative amendment instructions with the Governor's statement of objections, the opinion states:

Giving effect solely to the Governor's written statement of objections over any perceived graphic discrepancy of the returned bill in the veto package is also consistent with the Legislative Assembly's analogous, longstanding method for reconciling divergent amendment instructions and amendment mark ups (colloquially called the "m" versions or the "Christmas tree versions" of amendments).

N.D. Op. Att'y Gen. No. 2025-L-02, 6 (2025).

The opinion goes on to conclude the Governor's statement of objections operates like mandatory amendment instructions, and because past legislative assemblies resolved amendment discrepancies by deferring to the amendment instructions, the ambiguity in this case should be resolved in favor of the written statement of objections. N.D. Op. Att'y Gen. No. 2025-L-02, 6 (2025). This argument is flawed.

Unlike the Governor's written statement of objections, the amendment instructions document used by past legislative assemblies is not constitutionally mandated. Past amendment instruction documents served the purpose of providing a typist with clear direction as to the exact quoted words to add to or remove from a bill or resolution. The Governor's objection letter did not include any quoted language or comparable direction. Instead, the letter merely stated the Governor's objections generally.

It also is important to note the Legislative Assembly no longer creates or uses the amendment instruction document and the marked-up document serves as the official amendment to the bill or resolution. The *North Dakota Legislative Drafting Manual* provides the background and rationale behind the change:

Before the 2025 legislative session, amendments were prepared using an amendment instruction format. The original purpose of amendment instructions was to provide directions to a typist regarding which words to add or remove from a bill or resolution to create a new version of the bill or resolution before the availability of modern word processing software. The present-day ability to track changes to a document within the text of the document eliminates the need for the outdated amendment instruction document.

As such, beginning with the 2025 legislative session, the marked-up document containing tracked changes to the text of a bill or resolution will serve as the official amendment to the bill or resolution. At the end of this part of the manual are examples of amendments in the new format.

North Dakota Legislative Drafting Manual 61 (2025).

Effect of an Attorney General Opinion

It is the Legislative Assembly that gives the Attorney General authority.⁵ The Constitution states "the powers and duties of the ... attorney general ... must be prescribed by law." N.D. Const. art. V § 2. "[The Attorney General's]

⁵ The Attorney General has almost no constitutional authority in North Dakota. The constitution gives limited duties to the Attorney General: it requires the Attorney General to exist; defend the Congressional age limits provision; and be a member of the Board of University and School Lands. N.D. Const. art. V § 2; N.D. Const. art. IX § 3; N.D. Const. art. XVI § 4. Otherwise, the constitution gives no power or authority to the Attorney General.

powers and duties ... are not prescribed by the constitution but by legislative enactment." *State ex rel. Johnson v. Baker*, 74 N.D. 244, 258, 21 N.W.2d 355, 363 (1945). The Legislative Assembly has exercised this authority by statute and permitted the Attorney General to provide legal advice to his clients. Under North Dakota Century Code Section 54-12-01(6), the Attorney General may "consult with and advise the governor and all other state officers and when requested give written opinions on all legal or constitutional questions relating to the duties of such officers respectively." In this case, the opinion of the Attorney General is legal advice from an attorney to another officer of the executive branch and may be challenged in a legal proceeding as was done in the *Burgum* case. "[As] the responsible legal adviser for [state officers], [the] opinions shall guide these officers until superseded by judicial decision." *Johnson*, 74 N.D. at 259, 21 N.W.2d at 364. Additionally, the Legislative Assembly is not beholden to the Attorney General's interpretation of what language in Section 7 was vetoed if the Legislative Assembly returns to override the item veto.

An opinion of the Attorney General provides a state official acting in accordance with the opinion shelter from legal liability. However, the opinion is not a legally binding authority in the same manner as a court opinion.⁶ Notwithstanding the Attorney General's opinion directing the appropriation of the full \$35,000,000, it is well settled under North Dakota Supreme Court controlling precedent that the legal effect of removing the \$150,000 passthrough grant language results in an appropriation, as a matter of law, of \$9,850,000, rather than \$10,000,000, in subsection 1 of Section 7 and \$25,000,000 in subsection 2 of Section 7 of Senate Bill 2014 (2025).⁷ Thus, as a result of the opinion, the Director of the Office of Management and Budget may transfer \$34,850,000 without fear of legal liability for making an illegal transfer.

CONCLUSION

The Attorney General's opinion is inconsistent with the Constitution of North Dakota, judicial precedent, an opinion issued by his direct predecessor, and the practice of former governors. Through this opinion, the Attorney General endeavors to expand his power and the veto power of the Governor, allowing them to resolve ambiguity by agreement, and infringes on the ability of the Legislative Assembly to exercise its veto override power effectively. The result is the very situation the *Burgum* decision cautioned against and should be of great public concern.

⁶ The North Dakota Supreme Court has stated "[a]n Attorney General's opinion is entitled to respect if persuasive." *Riemers v. Jaeger*, 2013 ND 30, ¶ 20, 827 N.W.2d 330.

⁷ See *Burgum*, 2018 ND 189, ¶ 23 (citing *State ex rel. Sandaker v. Olson*, 65 N.D. 561, 260 N.W. 586, 587 (1935)) ("Although the Governor lacks the power to alter the mathematical calculations that result from vetoed items, any vetoed items are as a matter of law subtracted from any larger amount in which they are included.")