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LOCAL OR SPECIAL LAW CONSIDERATIONS REGARDING LEGISLATION SPECIFYING WHICH HIGHWAYS ARE TO BE BUILT

In 1984 the voters approved Article IV, Section 13, of the Constitution of North Dakota which provides in part:

> The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. 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. (emphasis added)

This constitutional provision replaced the constitutional provisions that were contained in Article IV, Sections 43 and 44, of the Constitution of North Dakota. Section 44 contained a general prohibition on local and special laws. Section 43 contained specific prohibitions on certain local and special laws, including under subsection 2 a prohibition on the passage of a law for the "[l]aying out, opening, altering or working roads or highways, vacating roads, town flats, streets, alleys or public grounds."

The 1984 changes were derived from Article IV as proposed by the North Dakota Constitutional Convention in 1972. These changes appear to have been intended to be changes not of substance but of efficiency. When the new language of Section 13 was being considered by the North Dakota Constitutional Convention in 1972, a representative from the State Highway Department appeared before the Committee on Legislative Functions to testify that the removal of the specific prohibition contained in subsection 2 of Section 43 "would allow the legislature to legislate specific sections of the public ways into the state or county or city network of roads." The minutes go on to reflect that the representative said that "[l]egislation of this type may or may not be based on prudent assessment of needs, financial capabilities, engineering and surveys, or integration of a functioning system of roads or street networks with adjoining states and provinces." The minutes reflect that in the discussion about deleting the specific prohibitions, the alternative of "inserting a simple, broad statement with respect to the relationship of local and state government" had been discussed. The representative thought it would be "a fine idea" to replace the specific prohibitions with "[t]he Legislature shall not pass local or special laws."

In addition, the North Dakota Supreme Court has had several occasions to interpret the local and special law prohibitions of Article IV, Sections 43 and 44, of the Constitution of North Dakota and has applied the same review in interpreting Article IV, Section 13. The court has not focused on any difference in language among or any particular language in Sections 43, 44, and 13 and has applied the same review to all alleged local or special laws. Local laws relate to a particular place. Special laws relate to particular persons or things of a class.

The purpose of the constitutional limitations on local and special laws, as stated by the North Dakota Supreme Court in *Baird v. Rask*, 234 N.W. 651 (1931), is "to secure as far

as possible uniform treatment of all who are similarly situated in any legislation affecting the class." In *Morton County v. Henke*, 308 N.W.2d 372 (N.D. 1981), and in numerous other decisions, the court has defined a special law as one relating only to a particular person or things of a class, as distinguished from a general law which applies to all things or persons or a class, and a local law as one which applies to a specific locality or spot, as distinguished from a law which operates generally throughout the state.

The test of a special law is the appropriateness of its provisions and the objects that it excludes. *Anderson v. Peterson*, 54 N.W.2d 542 (1952). The North Dakota Supreme Court has pointed out that not all special laws are forbidden:

> This section of the constitution [Art. IV, Section 43] must have a reasonable construction. To say that no classification can be made under such an article would make it one of the most pernicious provisions ever embodied in the fundamental law of a state. It would paralyze the legislative will. It would beget a worse evil than unlimited special legislation, - the grouping together without homogeneity of the most incongruous subjects under the scope of an all-embracing law. On the other hand, the classification may not be arbitrary. . . . It is our opinion that every law is special which does not embrace every class of objects or persons without the reach of statutory law, with the single exception that the legislature may exclude from the provisions of a statute such classes of objects or persons as are not similarly situated with those included therein, in respect to the nature of the legislation. The classification must be natural, not artificial. It must stand upon some reason having regard to the character of the legislation. *Edmonds v. Herbrandson*, 50 N.W. 970 (1891). (emphasis added)

Very few statutory classifications have been found invalid as local or special laws by the North Dakota Supreme Court. A statute was struck down as an arbitrary classification in *Edmonds v. Herbrandson*, 50 N.W. 970, because it classified counties based upon the value of each county's courthouse and jail on the effective date of the Act. Other examples of statutes found invalid appear in *Plummer v. Borsheim*, 80 N.W. 690 (1899) (no conceivable reason for a classification of all cities with a population of 800 or more which were not organized as an independent school district but located in a school township); *Angell v. Cass County*, 91 N.W. 72 (1902) (statute struck down which classified counties for the collection of taxes based on whether the county has or has not failed to obtain the benefits of a previously enacted statute); *Ex parte Connolly*, 117 N.W. 946 (1908) (a classification of counties having more than 6,500 inhabitants and in which no courthouse had been constructed prior to the effective date of the statute is arbitrary).

In the overwhelming majority of cases before the North Dakota Supreme Court in which the issue of special or local legislation has been raised, the court has upheld the constitutionality of the statutes and since the adoption of Article IV, Section 13, all statutes have withstood challenges on local and special law grounds. For example, in *State v. Knoefler*, 279 N.W.2d 658 (N.D. 1979), the court construed a statute that prohibited a commercial beekeeper from establishing an apiary within two miles of another commercial operator. It was argued that the statute created an unconstitutional classification between new and established beekeepers for the sole purpose of inhibiting competition. The court held that the statute did not violate the constitutional provision prohibiting the enactment of local or special laws, stating "it operates alike on all persons

and property similarly situated . . . it operates alike in all cases where the facts are substantially the same and it operates in the same manner with the same effect throughout the entire state." In *State v. Jensen*, 333 N.W.2d 686 (N.D. 1983), the court held that North Dakota's dangerous special offender statute did not violate local or special law prohibitions of the constitution. The court determined that because the dangerous special offender statute applied uniformly to all persons convicted of crimes committed in North Dakota, rather than to one specific locality or to particular persons or things, the statute did not constitute a special or local law in violation of the state constitution.

Although rare, other state courts have reviewed the placement of a portion of a highway under special law prohibitions and have found the placement unconstitutional. In *Soo Line Railroad Co. v. Department of Transportation*, 303 N.W.2d 626 (1981), the Supreme Court of Wisconsin found a law that required the construction of an at-grade crossing and prohibited a separated grade overhead structure on a particular highway at a particular place over a particular railroad company's tracks to be a private or local law. The law was held unconstitutional because the special law was not referred to in the title as was required by the constitution.

In *Lemhi County v. Swensen*, 327 P.2d 361 (1958), the Supreme Court of Idaho held a law that appropriated funds to a county for the construction and repair on a particular road in that county unconstitutional as a special law. The court said a special law does not apply in fact to all classes and all similar localities and to all belonging to the specified class to which the law is made applicable.

In *Tusso v. Smith*, 162 A.2d 185 (1960), the Supreme Court of Delaware upheld as constitutional against a local and special law challenge a law that gave the State Highway Department the authority to acquire the right of way for a highway through a particular city. the court found the clause in Delaware's constitution that prohibited special laws, unless for certain highways and upon a two-thirds vote of all the members of each house, to be very limited in scope. The court said the reason for the limitation was to prevent the evil of a flood of bills relating specifically and entirely to local physical changes in roads and streets, concerning which the legislature as a whole had no knowledge, and which were more properly left to the discretion of local governing bodies for solutions. Because the road was part of the state highway system and was not solely a matter of local concern, the special law clause did not apply to the challenged law. In *Application of Oklahoma Turnpike Authority*, 221 P.2d 795 (1950), the Supreme Court of Oklahoma suggested that major road projects facilitate vehicle traffic throughout the state, and as such, do not affect merely a particular locality or the inhabitants thereof, and hence laws enabling such projects are not local or special laws. The same court in *Marshall County v. Shaw*, 182 P.2d 507 (1947), held the disestablishment and liquidation of a particular prison was a matter of statewide concern citing decisions that held that establishing a state capitol in a particular city, a conservation district in a few counties, and a bridge over a particular river were matters of statewide concern.

There have been no challenges in this state made on local or special law grounds against a law that relates to a specific highway. However, any classification system that is not arbitrary appears to satisfy the court in upholding a statute against a special law challenge. Although a statute designating a particular road in a particular locality may be questionable as a local law, "an act of the legislature is presumed to be correct and

valid, and any doubt as to its constitutionality must, where possible, be resolved in favor of its validity." *Southern Valley Grain Dealers Ass'n v. Board of County Commissioners*, 257 N.W.2d 425 (N.D. 1977). The policy of upholding the constitutionality of a statute whenever possible is so strong that our state constitution under Article VI, Section 4, provides that the North Dakota Supreme Court "shall not declare a legislative enactment unconstitutional unless at least four of the members of the court so decide."