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## North Dakota Supreme Court Decisions

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NORTH DAKOTA SUPREME COURT DECISIONS

John Dawson, individually and on behalf of all other taxpayers similarly situated, Pl. and App., vs. M. J. Tobin, as County Auditor of Morton County, North Dakota, et al., Def. and Resps.

That the sole object sought in construing a constitutional provision is to ascertain and give effect to the intention and purpose of the framers and of the people who adopted it, and all rules of construction are subservient to, and intended to effectuate, such object. Primarily, such intention and purpose are to be found in and deduced from the language of the constitution itself.

That at the general election in November 1918, certain constitutional amendments relating to the initiative and referendum were approved and thereafter became part of the constitution. Such amendments provide: "The legislative power of this state shall be vested in a legislature consisting of a senate and a house of representatives. The people, however, reserve the power first to propose measures and to enact or reject the same at the polls; second to approve or reject at the polls any measure or any item or parts of any measure enacted by the legislature." They further provided that the legislative assembly by a declaration set forth therein might declare an act of the legislature to be an emergency measure; and that if such measure were passed by a vote of two-thirds of the members present and voting in each house, such emergency measure should take effect and be in force from and after its passage and approval by the Governor. They further provided that if a referendum petition is filed against an emergency measure that "such measure shall be a law until voted upon by the electors. And if it is then rejected by a majority of the votes cast thereon, it shall be thereby repealed." Such amendments further provided: "This section shall be self-executing and all of its provisions treated as mandatory.

Laws may be enacted to facilitate its operation but no laws shall be enacted to hamper, restrict or impair the exercise of the rights herein reserved to the people."

For reasons stated in the opinion it is HELD:

(a) That such constitutional amendments superseded the former provisions of the constitution relating to the initiative and referendum, and that all statutes in existence when such amendments became part of the constitution, which in any manner conflicted with such amendments, limited the scope of the powers therein reserved to the people, or interfered with the exercise or lessened the efficacy of such powers, were rendered inoperative and inapplicable to the initiative and referendum.

(b) The effect of the initiative and referendum provisions of the constitution is to make the lawmaking power of the legislature not final but subject to the will of the people and to reserve that power in the people themselves.

(c) The constitutional amendments relating to the initiative and referendum constitute both the source and the measure of the powers therein reserved to the people.

(d) The power of the people to reject laws under the power of the referendum is as broad as the power of the legislature to enact laws. The power of the referendum extends to every measure enacted by the legislature, including emergency measures, and to every section and part of any legislative measure.

(e) An emergency measure takes effect as a law upon its approval by the Governor, but such measure is subject to the power of the referendum, and if an emergency measure is rejected at a referendum election and "thereby repealed" the measure, including every part and provision thereof, is annulled and destroyed and ceases to have any effect from and after the time the rejection of the measure at the referendum election takes effect.

(f) Section 1-0216, N. D. R. C. 1943, which provides that "whenever any act of the legislative assembly which repealed a former law is repealed, such former act shall not be revived by such repeal, unless there is express provision to the contrary", has no application to the "repeal" of an emergency measure resulting from the rejection of such measure at a referendum election. Such section was intended to apply and applies only to the repeal of a law by another law.

(g) When an emergency measure, which amended and re-enacted a former law and repealed all provisions in conflict with such emergency measure, is rejected at a referendum election, such rejection completely recalls and nullifies such emergency measure from the time the rejection of the measure at the referendum election takes effect, and revives the law repealed by such emergency measure.

(Syllabus by the Court)

Appeal from the District Court of Morton County, Broderick, J. The plaintiff appeals from an order sustaining a demurrer to the complaint. REVERSED. Opinion of the Court by Christianson, Ch. J.