



1966

## North Dakota Legislative Summary: 1965

Edwin M. Odland

Jerome L. Larson

Robert A. Wheeler

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# Note

## North Dakota Legislative Summary: 1965

This article is intended to summarize significant legislation passed by the 1965 Legislative Assembly. Not all of the measures enacted receive attention, but the bills believed to be the most important to attorneys in their every-day practice of law have been included. Appropriations bills, other similar temporary legislation and laws of restricted application have not generally been noted. The summations are necessarily short and very general. The purpose is to point out where and how changes were effected, and to afford a warning of the areas of new legislation.

The new enactments are discussed under the following major headings:

CORPORATIONS AND BUSINESS	MOTOR VEHICLES
CRIMES AND PUNISHMENT	OCCUPATIONS
DOMESTIC RELATIONS	OFFICES AND OFFICERS
EDUCATION	PUBLIC UTILITIES
ELECTIONS	REAL AND PERSONAL PROPERTY
HEALTH AND SAFETY	SALES AND EXCHANGES
HIGHWAYS	SPORTS AND RECREATION
JUDICIARY	STATE AND LOCAL GOVERNMENT
JUDICIAL REMEDIES AND PROOF	TAXATION
LABOR	WELFARE
MINES AND MINERALS	WORKMEN'S COMPENSATION

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### CORPORATIONS AND BUSINESS

*Insider Trading of Equity Insurance Securities*—The federal Securities Exchange Act<sup>1</sup> was enacted in 1934 to bring into disrepute the practices of directors and officers of corporations who used

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1. 15 U.S.C.A. § 78p (Supp. 1964).

their positions of trust and the confidential information that came to them in such positions to aid them in their market activities, and to prevent unscrupulous use of inside information by large shareholders who exercised sufficient control over the destinies of their companies to enable them to acquire and profit by information not available to others.<sup>2</sup> Upon recommendation of the National Association of Insurance Commissioners, North Dakota, among other states,<sup>3</sup> has adopted the act and adapted it to the regulation of insider trading by officers, directors and large stockholders of domestic stock insurance companies. Sections 26-30-15 through 22 of the Century Code require the beneficial owner of more than ten per cent of any class of any equity security of a domestic stock insurance company or a director or officer of such company to file with the commissioner of insurance an initial statement of the amount of equity securities he owns and to file subsequent statements indicating any changes in ownership. Any profit realized by an officer, director or qualifying stockholder within a six-month period of any exchange of an equity security may be recovered by a suit by the company or by the owner of any security in behalf of the company if the company fails to bring action. Sale of any equity security by a person not owning the security or, if owning it, by one not making prompt delivery is illegal. Certain exemptions from the above provisions are enumerated in the act. (N.D. Sess. Laws 1965, ch. 216).

*Coercing Purchase of Insurance*—To protect independent insurance agents who have found their prospective sales limited by vendors and financing agencies who tie up insurance sales relating to the property they are selling, the Legislature enacted section 26-30-14 of the Century Code, which prohibits anyone engaged in the sale of real or personal property or in the business of financing the purchase or lending of money on the security of such property from requiring that the person purchasing the property or borrowing the money negotiate his insurance thereon through a particular insurer. (N. D. Sess. Laws 1965, ch. 215).

*Securities Registration*—Amendments have been made to the following sections of the Century Code: 10-04-05 (7), defining specific commercial paper exempt from securities registration; 10-04-06 (9), setting forth new conditions for exemption from registration of the sale of preorganization subscriptions of shares of stock; 10-04-07.1 (1), providing for registration by announcement the stock of life insurance companies which meet certain enumerated qualifications; 10-04-07, providing for the inclusion of state and federal income

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2. II LOSS, SECURITIES REGULATION 1037, 1038 (2d ed. 1961).

3. E.g., N.Y. INSURANCE LAW § 78(5) (Supp. 1965).

taxes as deductions in figuring the average annual net earnings in determining which securities shall be entitled to registration by description, and also increasing the minimum fee for registration and renewal of registration of securities by description; 10-04-08 (2), changing the procedure for determining the filing fee payment on securities required to be registered by qualification; and 10-04-10 (6), providing a new schedule of fees for registration of securities dealers, salesmen and investment counsel. (N.D. Sess. Laws 1965, chs. 95 and 96).

### CRIMES AND PUNISHMENT

*Interracial Cohabitation*—The repeal of section 12-22-13 of the Century Code, which made it a crime for a Negro and white person of the opposite sex, not married to each other, to live in and occupy the same room is in keeping with a United States Supreme Court decision striking down a similar Florida statute.<sup>4</sup> (N.D. Sess. Laws 1965, ch. 103).

*Extortion*—Only a misdemeanor under pre-existing law, an unsuccessful attempt by means of verbal threat to extort money or property from another person has been made, by means of amendment of section 12-37-07 of the Century Code, punishable by imprisonment in the penitentiary for not less than one year nor more than five years or in a county jail for not more than one year. (N.D. Sess. Laws 1965, ch. 104).

*Trading Surplus Food*—A new crime has been added to the books by creation of section 12-38-23 of the Century Code, making it a misdemeanor punishable by a fine of up to \$500 and imprisonment in the county jail for up to six months for knowingly making unauthorized disposition of food or other commodities under any program of the federal government or for the unauthorized receipt of such food or other commodities and conversion of the same to one's own use. (N.D. Sess. Laws 1965, ch. 105).

*Willful Trespass*—Section 12-41-12, which made it a misdemeanor for a person to maliciously damage timber or fences, has been repealed, and those offenses have been incorporated in a broad new law, section 12-41-14, which defines willful trespass upon land and makes violations of its provisions a misdemeanor. (N.D. Sess. Laws 1965, ch. 106).

*Pardon and Parole*—To define further the powers of the State

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4. *McLaughlin v. Florida*, 134 U.S. 379 (1964). The Florida statute made it a crime for a Negro man and white woman or Negro woman and white man, not married, to habitually live in and occupy the same room at night. The Supreme Court overturned a conviction under the statute on grounds it denied equal protection because two whites or two Negroes doing the same act were not deemed to be committing a crime.

Parole Board, created in 1963, the Legislature has amended section 12-59-07 of the Century Code to eliminate certain requirements for parole and to leave the decision largely to the discretion of the Parole Board. It also amended section 12-59-13 giving the board discretionary authority to parole a person imprisoned under an indeterminate sentence prior to the date the minimum sentence is served, and enacted section 12-59-13.1, empowering the board, prior to expiration of the minimum term, to fix the maximum sentence to be served by a person imprisoned under an indeterminate sentence, provided the sentence is no greater than the maximum set by statute.<sup>5</sup> (N.D. Sess. Laws 1965, ch. 110).

*Criminal Identification*—A state Bureau of Criminal Identification and Apprehension is established by chapter 12-60 of the Century Code and is placed under control of the office of attorney general. A board of managers consisting of the attorney general and one city police chief, one sheriff and one state's attorney is to be appointed by the governor to serve in an advisory capacity; the attorney general is president of the board and has responsibility for full control and management of the bureau. The bureau has many of the powers and duties formerly conferred upon the warden of the state penitentiary as superintendent of criminal identification under chapter 12-58, which is repealed by this act. The new agency also shall act as a consumer fraud bureau. (N.D. Sess. Laws 1965, ch. 111).

*Wrongful Imprisonment*—Chapter 12-57 of the Century Code, relating to relief for wrongful imprisonment, has been repealed. (N.D. Sess. Laws 1965, ch. 203).

#### DOMESTIC RELATIONS

*Support by Stepfathers*—To alleviate administrative problems regarding aid to dependent children payments to stepchildren, the Legislature enacted section 50-09-08.1 of the Century Code, which binds a stepfather to support his wife's children for the duration of the marriage if without his support they would be eligible for ADC assistance.<sup>6</sup> The act also provides that the natural father is not relieved of any obligation to support his own children and amends section 50-09-10 to assert that the income of the stepfather

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5. The question of whether statutes dealing with indeterminate sentences violate constitutional requirements of due process and equal protection has been answered in the negative by the California courts. *In re Larsen*, 44 Cal. 2d 642, 283 P.2d 1043, appeal dismissed 350 U.S. 928 (1955). California also has held that the state's Adult Authority in administering the indeterminate sentence law exercised an administrative function, not a judicial one, and that determination of the sentence within the maximum and minimum imposed by statute was not unconstitutional as conferring judicial power on a non-judicial body. *Fleischer v. Adult Authority*, 20 Cal. Rptr. 603, 202 C.A.2d 44 (1962).

6. This section apparently abrogates the provision of N.D. CENT. CODE § 14-09-09 that declares a husband is not bound to maintain a wife's children by a former husband. At least he is bound if without his support they would become welfare wards.

must be considered when aid to dependent children grants are made for his stepchildren. (N.D. Sess. Laws 1965, ch. 325).

*Child Support Payment*—To facilitate the enforcement of child support decrees and to conserve welfare funds, the courts have been empowered in chapter 14-08 of the Century Code to decree that payments for child support or alimony combined with child support be made to the clerk of court. The clerk, with the assistance of the state's attorney, shall keep records pertaining to support payments, send notices of arrears when there is a failure to make required payments and request the district judge to issue a contempt of court citation upon failure to make payment by the party charged with that duty. The citation would not issue, however, without consent of the support recipient or an attorney or guardian therefor. Similar proceedings may be instituted against the person charged with support payments upon action of the county welfare board if the recipient of the support payments makes application for welfare assistance, or upon the action of any person entitled to support payments incorporated in a court decree. (N.D. Sess. Laws 1965, ch. 115).

*Grounds for Divorce*—The term "any psychosis" has been substituted for "paranoia, paresis, dementia-praecox, Huntington's chorea or epileptic insanity" in section 14-05-03 of the Century Code as types of insanity giving cause for divorce after the affected spouse has been afflicted therewith and institutionalized for a period of five years. (N.D. Sess. Laws 1965, ch. 114).

#### EDUCATION

*School District Dissolution*—Authority previously granted to the board of county commissioners has been transferred to the county committee for reorganization of school districts, by amendment of sections 15-22-21 and 22, in connection with calling and conducting hearings and issuing subsequent orders regarding dissolution and annexation of school districts or attachment of unorganized territory to existing districts. (N.D. Sess. Laws 1965, ch. 130).

#### ELECTIONS

*Primary Election Date Change*—To reduce the cost and inconvenience to candidates and party organizations by shortening the campaign period between the primary and general elections, section 16-04-01 has been amended to change the date for state primary elections from the last Tuesday in June to the first Tuesday in September. Sections in several other chapters of title 16 also have been amended as a consequence of the election date change

to redetermine dates relating to time of notice to county auditors, county party committee organization meetings, state central committee meetings, precinct committeemen meetings and party conventions. (N.D. Sess. Laws 1965, ch. 157).

*Ballot Arrangement*—As a result of an amendment to section 16-04-17, municipalities or political subdivisions employing voting machines now must rotate or alternate the names of candidates on the ballots. (N.D. Sess. Laws 1965, ch. 158)

*Extension of Voting Privilege*—Pursuant to approval by the electorate in the 1966 November general election, chapter 16-16 of the Century Code has been expanded to extend to residents of this state for less than one year who had been citizens of another state immediately before moving to North Dakota the privilege of voting for presidential and vice presidential electors. (N.D. Sess. Laws 1965, ch. 159).

*Absent Voter Ballots*—By amending sections in chapter 16-18 plus sections 15-47-06 and 40-21-13 of the Century Code, the Legislature has provided for the use of absent voter ballots in city, village and school elections and special state elections. Previous law limited use of absent voter ballots to general and primary elections and such special elections for state and county offices as were held at the same time as a general or primary election. (N.D. Sess. Laws 1965, ch. 160).

*Initiative and Referendum*—To implement section 25 of the Constitution of North Dakota as provisionally amended in 1965,<sup>7</sup> the Legislature created chapter 16-22 of the Century Code to provide for the procedure, conditions, manner and form of submitting measures to a vote of the electorate through use of the initiative and referendum. The new chapter also provides for imprisonment of up to two years and fines of up to \$5,000 for violations. The act does not become operative until and unless the proposed amendment of section 25 of the Constitution is approved by the electorate next November. (N.D. Sess. Laws 1965, ch. 162).

#### HEALTH AND SAFETY

*Pollution of Waters*—Directed primarily against communities that continue to dump raw sewage into rivers in the state are amendments to sections 61-01-14 and 61-02-14 of the Century Code. The former specifies under what conditions a city may discharge untreated sewage into a river, while the latter adopts the model definition of "pollution" established by the United States Depart-

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7. N.D. SESS. LAWS 1965, ch. 483, § 5.

ment of Health, Education and Welfare and authorizes the North Dakota Water Conservation Commission to adopt rules and regulations concerning the financing by local participants in any water development project in cooperation with the United States or with political subdivisions or local entities. (N.D. Sess. Laws 1965, ch. 446).

*Disposal of Dead Bodies*—Provisions in a will for bequeathing one's body for medical dissection or bequeathing particular organs for use in treating the living have been held by a majority of jurisdictions not to be binding, and the next of kin have a superior right to determine the place and method of burial.<sup>8</sup> The North Dakota Legislature has seen fit, in choosing between the feelings and sensitivities of survivors and the removal of barriers to advancement of medical research and treatment, to favor the latter by amending section 23-06-01 of the Century Code to give a person specific authority to direct in writing the disposition of his own body or parts thereof for purposes of medical research. Section 23-06-01.1 has been added to provide immunity from civil suit to a licensed physician who in good faith removes any part of the body of a deceased person in reliance on the act. (N.D. Sess. Laws 1965, ch. 190).

*Sterilization*—Though subject to bitter attacks on both legal and medical grounds, statutes providing for sterilization of mentally incompetent individuals and habitual criminals have been generally accepted, rightly or wrongly, throughout this nation as a means of protecting society from the proliferation of an inferior or undesirable class of persons.<sup>9</sup> Doubtful of both the value and validity of the North Dakota laws dealing with sterilization, chapter 23-08 of the Century Code, the Legislature repealed the act. (N.D. Sess. Laws 1965, ch. 203).

*Release of State Hospital Patients*—A patient involuntarily committed to the state hospital under emergency procedure may be detained following his request for release while a determination of the necessity for commencement of judicial proceedings against him is made. Section 25-03-10 has been amended to extend the period of detention from seven days to twenty days. (N.D. Sess. Laws 1965, ch. 204).

*Reporting Abuse of Children*—The social desirability of having the physical abuse of children reported to authorities prompted the legislature to create chapter 50-25 of the Century Code, which re-

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8. 1 PAGE, WILLS 798 (Bowe-Parker revision 1960).

9. See *Sterilization—Scope of State's Power to Use Sterilization on Mental Defectives and Criminals—Operation of the North Dakota Statute*, 26 N.D. BAR BRIEFS 183 (1950).



quires doctors and public health nurses to report to the division of child welfare of the State Public Welfare Board any serious injury or physical neglect of a child under eighteen years of age that cannot be explained as being accidental in nature. From such a report the division of child welfare shall investigate the circumstances surrounding the injury or neglect. Since two reasons that such injuries are not reported by physicians who treat abused children are the physician-patient privilege on disclosure of confidential information and the reluctance to assume legal liabilities that might flow from an incorrect report, the act also provides immunity from civil and criminal liability for anyone who, in good faith, participates in preparing the report or in any action founded upon it, and removes the statutory physician-patient privilege<sup>10</sup> and husband-wife privilege<sup>11</sup> from any proceeding arising from such a report. (N.D. Sess. Laws 1965, ch. 327).

*Mental Health and Retardation Service Units*—To promote treatment of mental health problems on a community level, the Legislature created chapter 25-12 of the Century Code, authorizing cities of 5,000 or more population or counties containing a city of 5,000 or more population to establish local mental health and retardation service units upon petition of voters and approval of the governing body of the sponsoring city or county. Such units may be operated either by the city or county or by a nonprofit corporation by means of a contract with the city or county that has approved the unit. Application may be made to the mental health division of the State Department of Health for financial assistance in establishing and maintaining a unit. Apparently such aid also is available to a private nonprofit corporation through a contract with the mental health division, regardless of whether the formalities of establishing a mental health unit in the particular political subdivision or subdivisions have been observed.<sup>12</sup> Subject to approval by the electorate, the sponsoring subdivision or subdivisions may contribute to the financing of the unit by levy of a property tax. Each unit shall be governed by a board of directors of up to thirteen members, to be appointed by the governing body or bodies of the sponsoring subdivision or subdivisions. The board may employ such professional personnel as it deems necessary to operate the unit and may delegate such of its powers and duties as it feels necessary and desirable for administration of the unit, which must be under the medical direction of a qualified psychiatrist. (N.D. Sess. Laws 1965, ch. 206).

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10. N.D. CENT. CODE § 31-01-06 (1960).

11. N.D. CENT. CODE § 31-01-02 (1960).

12. North Dakota attorney general's opinion to Eugene A. Kruger, states attorney, Cass County, April 30, 1965.

## HIGHWAYS

*Right of Way Encroachment*—Encroachment on the right of way of state highways, other than for temporary parking of a motor vehicle, without written permission from the state highway commissioner is prohibited by section 24-03-23 of the Century Code. Vehicles and other property left along the right of way for more than seventy-two hours, ownership of which cannot be determined, shall be deemed to be abandoned and shall be impounded, subject to disposal by the state. (N.D. Sess. Laws 1965, ch. 200).

## JUDICIARY

*Judicial Selection*—Pursuant to acceptance by the voters in the 1966 general election of the far reaching change in section 90 of the North Dakota Constitution, legislation was passed to implement the new judicial selection procedure. If the constitutional amendment is accepted, North Dakota will join a growing number of states to use the appointive-elective method of selection of judges. Procedurally, the plan creates a judicial nominating commission which would select superior lawyers for nomination for appointment to a vacancy on the Supreme Court and district courts. Judges under this plan are initially appointed for a period of three years and until the next following general election when the electorate confirms or rejects the appointed judge. If a judge should not be approved, then another appointment would be made in the same manner as the original appointment. The principle and basic framework for the new procedure is placed into the Constitution and the details are left for the statutory law. Section 27-02-01 provides that the chief justice shall be selected by a Judicial Council.<sup>13</sup> Judges of the supreme court or district courts are restricted from practicing law and are prohibited from hearing cases in which they have an interest. Sections 27-20-01 through 27-20-07 concern vacancies in the Supreme Court and district courts and the method of filling such vacancies. Also included in the bill are amendments to existing statutes which relate to the placing of the names of judges on the election ballot, petitions, certificate of nomination for elected officials, and meetings and duties of the Judicial Council. (N.D. Sess. Laws 1965, ch. 225).

*Judicial Council*—Because county courts of increased jurisdiction are now trying a relatively large volume of cases in North Dakota, all judges of the courts of increased jurisdiction qualify for membership on the Judicial Council. Before this amendment to section

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13. The Judicial Council consists of all the active and retired supreme and district court judges; one county judge; the attorney general; the dean of the School of Law; and five members of the State Bar Association. N.D. CENT. CODE § 27-15-01 (1965).

27-15-01, only one judge from all the county courts of increased jurisdiction was selected by the Supreme Court to sit on the council. (N.D. Sess. Laws 1965, ch. 223).

*Family Courts*—An increasing number of states are recognizing that family controversies are primarily social rather than civil or criminal in nature. Mindful of this, the 1965 North Dakota Legislature enacted chapter 27-05.1 of the Century Code to establish a family court system within the district courts of the state. Family courts can only be established in counties with a population exceeding 35,000 after a determination by the presiding district judge based on social conditions and the number of cases. If he finds a need, the judge shall issue his order in May for establishment of a family court by the following July 1.<sup>14</sup> Jurisdiction of the family court over a controversy is invoked by the filing of a petition by one of the parties residing in the county in which the court is located. The court shall set a hearing on the petition but in the meantime it may issue orders concerning the custody and care of children of the marriage and such restraining orders as are deemed necessary. At the time of the hearing the court may refer the parties to a court counselor for informal conferences to attempt reconciliation. For sixty days after the hearing on the petition neither party may file an action for divorce, annulment or separation without a court order to do so. If at the end of sixty days the controversy has not been settled either spouse may institute proceedings. The act also describes the powers and duties of the family court counselor and provides for the privacy of all hearings and conferences, the confidentiality of communications and records and inadmissibility as evidence of admissions and statements made by the parties at conferences. North Dakota's act is narrower in scope than what is generally considered as a "family court act"; rather, it is more the type of legislation passed involving "conciliatory courts".<sup>15</sup> This is not to detract from the North Dakota legislation, for there is much that the courts can do in the area of marriage reconciliation.<sup>16</sup> An important provision of the act allows any reconciliation agreement between the parties to be reduced to writing and a court order made requiring the parties to comply therewith.<sup>17</sup> (N.D. Sess. Laws 1965, ch. 217).

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14. Since the effective date of this act was not until July 1, 1965, the question arises whether a family court may legally be established before May of 1966.

15. An example is California's Conciliation Court Law, CCP 1740 et. seq., CALIFORNIA CODE ANN. (1955).

16. In 1961, 1,262 couples were reconciled in California. This was 59.7 per cent of the couples who sought the court's services. Of this percentage, 70 per cent were permanent reconciliation. Crenshaw, *A Blueprint for Marriage: Psychology and the Law Join Forces*, 48 A.B.A.J. 125 (1962).

17. According to Crenshaw, *ibid.*, the reconciliation agreement, through the assistance of professional social services and the force and prestige of judicial authorities, has been the backbone of the act. It is felt that the state was a party to the original marriage contract and therefore should be allowed to participate in spelling out the rights and duties of husband and wife.

*Salaries of Judges of County Courts With Increased Jurisdiction—*

For the third time in the last four legislative assemblies, salaries have been increased for the judges of a county court of increased jurisdiction. By amending section 27-08-08 the judge's salaries are now \$9,000 in counties with not more than 15,000 inhabitants; \$11,000 in counties with populations between 15,000 and 22,000 inhabitants; and \$12,000 for counties with populations over 22,000 inhabitants.<sup>18</sup> (N.D. Sess. Laws 1965, ch. 218).

*Change of Venue*—Counties which do not have enough jury cases to warrant a jury term of district court no longer are restricted to awaiting the call of a jury term in an adjacent county for trial of such cases. Section 28-04-07 now allows a change in venue to any county within the judicial district under such circumstances. Previously, change of venue was limited to an adjacent county. (N.D. Sess. Laws 1965, ch. 226).

*Jurisdiction of County Justices*—Again the sparseness of population in areas of North Dakota has given rise to a new statute. The Legislature passed section 27-18-04.1 which provides additional jurisdiction and authority to the county justices. It is now possible for a justice to reside outside the county he serves and retain jurisdiction in his county of residence to perform acts and exercise power relating to the county in which he is justice. He cannot, however, hold a trial, jury or otherwise, unless by a change of venue, except in the county in which he is justice. This section is applicable to both civil and criminal matters. In the case of the county justice residing outside the county, the clerk of court of the district court for the county which the justice was elected shall also be the clerk for the county justice during the justice's absence or when the justice approves. The clerk has the power to administer complainants oaths, file criminal complaints, issue warrants of arrest, and seemingly assume the duties of the county justice, except for the holding of trials. If a justice is absent from the state, is disqualified, or is unable or unwilling to act, the district court clerk may, after consulting with the states attorney, get another county justice from an adjacent county. (N.D. Sess. Laws 1965, ch. 224).

*Juries*—The availability of each other's juries between the district courts and the county courts of increased jurisdiction, within

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18. It is interesting to note the increases by the various classifications from the salaries which were awarded by the 1959 Legislature. In that year the judges salaries were increased to \$6,500 in counties not exceeding 15,000 inhabitants; \$8,000 in counties having a population between 15,000 and 40,000 inhabitants; and \$9,500 in counties exceeding 40,000 inhabitants. The present increase is more encompassing because of the lowering of the population classification for the \$12,000 bracket from a county not exceeding 40,000 to a county not exceeding 22,000 inhabitants. With the present increase, a judge's earnings are becoming more competitive with those of the practicing attorney.

a county mutually served by such courts, has been increased by an amendment to section 27-09-26. Now available is the complete jury panel, whereas previously, only a jury which was ordered, drawn, and summoned and while in attendance in one court could be used by the other court. (N.D. Sess. Laws 1965, ch. 219).

*Civil-Expert Witness Fees*—The amount which is taxed as part of the judgment by a clerk of court under section 28-26-06(5) now allows an expert witness a fee of up to fifty dollars per day, including the time spent in the preparation for trial. (N.D. Sess. Laws 1965, ch. 227).

*Criminal Compensation for Court-Appointed Attorney*—With the rise in the number of indigent clients which an attorney must represent because of recent Supreme Court decisions, the 39th Legislative Assembly raised the fee payable to an attorney for defending an indigent client. Section 29-01-27 was amended to raise the compensation from a sum not to exceed twenty-five dollars to a sum not to exceed fifty dollars. (N.D. Sess. Laws 1965, ch. 228).

*Criminal Appeal*—In a recent decision, the North Dakota Supreme Court held that an order suspending the imposition of a sentence is neither an order nor a final judgment of conviction from which an appeal may be taken.<sup>19</sup> That has now been changed. The Legislature has amended section 29-28-06 of the Code to permit an appeal from a verdict of guilty, not just from a final order or a judgment of conviction. Thus, anyone who receives a suspended or deferred sentence now has the right to appeal. Obviously, a person would prefer a verdict of not guilty through an appeal rather than a suspended or deferred sentence. (N.D. Sess. Laws 1965, ch. 229).

*Bar Association Membership*—To be a member of the North Dakota State Bar Association an attorney need not now be a "practicing" attorney. Section 27-12-02 of the Code has been amended to conform with the marked changes brought about by the Judicial Selection Act by deleting a provision exempting attorneys who are admitted to practice law in the state but who hold judicial or other public office from payment of the license fees. These persons are included within the present simplified statute. (N.D. Sess. Laws 1965, ch. 222).

*Attorneys' Licenses*—In a companion bill, the Legislature amended the requirement of an annual license to practice law to include a person desiring to hold judicial office. Also added to section

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19. *State v. Carroll*, 123 N.W.2d 659 (N.D. 1963). In his opinion, Judge Erickstad cited favorably an Oregon case, *State v. Gates*, 230 Ore. 84, 368 P.2d 605 (1963), wherein it was stated: "Being in suspense (the judgement of conviction), there would normally be no final judgement and no right of appeal. Of course, the legislature may grant an appeal from even a judgment in suspense if it so desires."

27-11-22 was a second exception for a smaller fee of twenty dollars. Previously the exception was limited to an attorney whose certificate of admission was dated one year or less prior to the date of application *and* who lived outside the state and did not practice in the state. The new exception is created by changing the word *and*, and substituting *or*. (N.D. Sess. Laws 1965, ch. 220).

*State Bar Fund*—Included in allowable expenditures from the state bar fund are those which may be incurred by a grievance committee of the Supreme Court in investigating charges warranting the suspension or disbarment of one of its members. Prior to the amendment of 27-11-24, only the expenses of the State Bar Board for the same purposes were allowed from the fund. (N.D. Sess. Laws 1965, ch. 221).

#### JUDICIAL REMEDIES

*Quiet Title Action Complaint*—New requirements for the complaint form of a quiet title action are set out in section 32-17-04. The interest of the State of North Dakota, if known, must be included in the complaint if the state is named as a party defendant; or, in the alternative, a statement must be made that the complainant is not aware of the state's specific interest. This change was necessitated because of the many complaints which did not include the interests of the state in the property and, as a result, it required the searching of the numerous records of the departments and agencies to determine what interest the state might have in said property as result of liens or judgments. Such a search was not in itself too productive and was undoubtedly a costly affair. The language used is not as strong as that used in the federal statutes.<sup>20</sup> Under the federal statute, where the United States or its agency is made a party defendant in a quiet title action, the complaint must state specifically the nature of the interest and the complainant is bound by his statement. If the complainant neglects to state the nature of the interest, that interest is not adjudicated at the trial. (N.D. Sess. Laws 1965, ch. 233).

*Exemptions from Garnishment*—The amount of wages and salaries exempt from garnishment has been increased by the passage of an amendment to section 32-09-02. A resident who is not a head of a household now has a thirty-five dollar per week exemption from garnishment proceedings. A head of a family has an increased exemption of fifty dollars per week plus five dollars per week for each dependent. This latter exemption is limited to a total of twenty-five dollars per week, and to become entitled to it, a wage-

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20. 28 U.S.C. § 2410 (1964).

earner must make and deliver to his employer an affidavit stating that he is the head of a family and specifying the number of dependents. (N.D. Sess. Laws 1965, ch. 231)

*Garnishment Disclosure Fees*—The new director of the Office of Accounts and Purchases will be the person on whom service upon the state of North Dakota or one of its agencies as garnishee is made pursuant to an amendment to section 23-09-05. Previously service was made upon the state auditor. The fee for making and filing the affidavit of disclosure has been increased from three dollars to ten dollars by the same statute. Plaintiff's tender to a garnishee as his fee for making an affidavit of disclosure has also been increased by section 32-09-10 from two dollars to ten dollars. Service upon a foreign corporation is still upon the secretary of state or the commissioner of insurance but the fee has been increased to ten dollars. (N.D. Sess. Laws 1965, ch. 232).

*Physician's Privileged Communication*—Privileged communication to a physician or surgeon has been extended by an amendment and a changing of words in section 31-01-06. The degree of extension and the ramifications arising from the change are quite subtle. Previously the statute read, "A physician or surgeon, without the consent of his patient, cannot be examined as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient." The new language changes the emphasized words to read thus: "or as to any communication made by the patient to him in the course of professional appointment." (N.D. Sess. Laws 1965, ch. 230).

## LABOR

*Department of Labor*—The division of labor of the Department of Agriculture and Labor was taken out of that department and an independent Department of Labor established by revising chapter 34-05. The newly created department will be administered by a commissioner of labor, who will conduct the matters formerly administered by the deputy commissioner of agriculture and labor. The commissioner of labor is to be elected to a four year term on a no-party ballot in the 1966 general elections. The effective date of the section is January 1, 1967. Certain areas of the prior law were necessarily repealed to effect the changeover. Specifically repealed was section 34-05-02 which deals with the duties of the administrator under the labor division of the Department of Agriculture and Labor. Chapter 34-10, which deals with the settlement of labor disputes, was repealed twice by the 1965 session, once by chapter 236 and again by chapter 239 of the session laws. A disparity in effective dates arises because of this double repeal. Chapter 239

gives no effective date so that it became effective on the general date for the bills passed by the Legislature, July 1, 1965. Chapter 236 specifically states, however, that the repeal shall not become effective until January 1, 1967. Following a general rule for statutory construction wherein the specific overrules the general, it would seem that the effective date for the repeal of chapter 34-10 would be January 1, 1967. (N.D. Sess. Laws 1965, ch. 236).

*Minimum Wages and Hours*—With the advent of the new labor department in 1967, the 39th Legislative Assembly gave it, and the commissioner of labor, the power to investigate conditions and prescribe standards for hours of employment, working conditions, and minimum wages. Previously chapter 34-06 applied only to women and minors, but it has now been extended to include *all* employees. Exceptions to the minimum wage sections are provided for employees who are incapacitated or who have limited ability due to age, physical or mental condition, or experience and training. (N.D. Sess. Laws 1965, ch. 237).

*Wage Collection*—The 39th Legislature enacted a new section relating to the collection and payment of wages for labor. Under section 34-14-02 wages become due semimonthly in the absence of an advance agreement between the parties concerning the payment of wages. The payment of wages to employees who are separated from a payroll before a scheduled payday become due according to the type of separation involved. A discharged employee's wages become due immediately and are to be paid within twenty-four hours of the separation. Separation by an employee quitting or by an industrial dispute will cause a person's wages to become due at the next regularly scheduled payment date. Penalties for failure to comply with the chapter are in effect for both the employer and employee—a fine of not less than twenty-five dollars or more than fifty dollars. The most important section of the chapter<sup>21</sup> empowers the commissioner of labor to take assignment in trust of wages and wage claims and to bring the legal action necessary to collect on the claim in behalf of the employee. The commissioner of labor also has the duty to investigate, to hold hearings, and to enforce compliance with the statutes. (N. D. Sess. Laws 1965, ch. 240).

*Age Discrimination Prohibited*—An employer who, in hiring or dismissing persons between the ages of forty and sixty-five, discriminates solely on the ground of the age of the person will be committing an unlawful act under section 34-01-14. A penalty of not more than twenty-five dollars or imprisonment of not more than

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21. N.D. CENT. CODE § 34-14-08 (1965)



one day, or both, is imposed for violation of the statute. (N. D. Sess. Laws 1965, ch. 235).

*Equal Pay*—Unjust discrimination between sexes in the payment of wages for comparable work on jobs that have comparable requirements relating to skill, effort, and responsibility, but not to physical strength, is now prohibited by law. The commissioner of labor is empowered to enforce the provisions of chapter 34-06.1. A two-year statute of limitations after the cause of action occurs was also enacted and penalties of a fine of not more than one hundred dollars or imprisonment for not more than thirty days, or both, are provided for any violation of the act. Records must also be kept by the employers with failure to do so involving a penalty of up to one hundred dollars. (N.D. Sess. Laws 1965, ch. 238).

#### MINES AND MINERALS

*Oil and Gas Field Unitization*—To promote recovery of oil the Legislature has added to chapter 38-08 of the Century Code provisions for unitized development, operation and management of oil and gas fields. The act empowers the state industrial commission, after finding that unitization is necessary for substantial increase of ultimate recovery, to order creation of a unit and prescribe a plan of unitization. The plan should include provisions for management of the unit, allocation of production, apportionment of the cost of development, compensation for use of equipment and other property of lessees, and duration of the unit. The commission's order creating the unit does not become effective unless the plan has been signed or ratified by persons owning eighty per cent of the mineral and royalty interests. The act also defines the rights and obligations of the unit and the individual interest holders. Various other provisions relate to enlargement of the unit, participation by public lands, unlawful operation and appeals to the district court by persons adversely affected by orders of the commission made pursuant to the act. (N.D. Sess. Laws 1965, ch. 260).

#### MOTOR VEHICLES

*Vehicle Equipment Safety Compact*—North Dakota enacted the Vehicle Equipment Safety Compact as chapter 39-23 of the Code and formally joined with other jurisdictions which have adopted the compact.<sup>22</sup> The purposes of the compact are to promote uniformity in the regulation of standards for equipment, to secure uniformity of laws and administrative practices, and to provide means for the

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22. The other states which have adopted the Vehicle Equipment Safety Compact are Arizona, Colorado, Florida, Illinois, Louisiana, Maine, Michigan, New Jersey, New Mexico, Oregon, Pennsylvania, Texas, Washington, Wyoming, and New York.

encouragement and utilization of research. It is, therefore, intended to emphasize performance requirements and not to determine specific details of engineering, except those which are necessary for the meeting of such performance requirements. North Dakota's compact commissioner will be the motor vehicle registrar. The commissioner may also designate an alternate from among the employees of his agency. It is also provided that no rule, regulation, or code issued by the Safety Commission shall take final effect until approved by an act of the Legislative Assembly. Temporary provisions may be adopted by the motor vehicle registrar until such time as they are acted upon by the Legislature. Any person found guilty of a conflict of interest in connection with the administration of this compact may be fined up to \$500 or imprisoned for not more than one year, or both. In addition, the person shall forfeit his status as a public official or employee of North Dakota. The accidents and deaths on our streets and highways present a very serious human and economic problem. This compact will help states develop the vital needs for greater inter-jurisdictional cooperation and to achieve the necessary uniformity in the laws, rules, regulations and codes relating to motor vehicle equipment. (N.D. Sess. Laws 1965, ch. 284).

*Seat Belt Requirements*—The Vehicle Equipment Safety Act discussed above should help unify laws pertaining to safety devices, such as that required by section 39-21-41.1. This enactment makes it unlawful to buy, sell, lease, trade, or transfer either from or to a resident of North Dakota a 1966 or later model automobile unless it is equipped with seat belts meeting specified minimum standards for the front seat. Violation of the law is a misdemeanor.<sup>23</sup> (N.D. Sess. Laws 1965, ch. 283).

*Chemical Analysis Test*—Section seven of the "implied consent" chapter has had a number of changes since the original enactment of the bill in 1959. The changes made by the 39th Legislative Assembly deal with the types of tests which may be administered. The latest law amends section 39-20-07 to provide for admissibility into evidence the results of a chemical analysis test for purposes of proving the amount of alcohol in a person's blood when it is shown that the test was fairly administered by a person certified to administer such a test, provided that the test is shown to have been performed by methods or devices, or both, approved by the state toxicologist. The law previously required the test to be given by means of the Harger drunkometer or other similar device approved by the American Medical Association or National Safety Council.<sup>24</sup> (N.D. Sess. Laws 1965, ch. 281).

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23. N.D. CENT. CODE § 12-06-14 (1960).

24. The supreme court in *McDonald v. Ferguson*, 129 N.W.2d 348 (N.D. 1964) intimated that there may be a question as to an invalid delegation of legislative power by

**Accident Reports**—Amendments to various sections of the Century Code make it mandatory to report a vehicle accident which involves injury or property damage of fifty dollars or more. Failure to so report may result in a license suspension. A report must be made as provided in sections 39-08-06 through 39-08-09, which deal with any accident involving the rendering of aid or information, the striking of an unattended vehicle, and the striking of a fixture on a highway. Previously the report had to be made for accidents coming under section 39-07-12 dealing with a garage reporting an accident, and sections 39-08-04 through 39-08-17. (N.D. Sess. Laws 1965, ch. 273).

#### OCCUPATIONS

**Licensing of Detection of Deception Examiners**—The 39th Legislative Assembly passed an act providing for the licensing and regulation of detection of deception examiners—commonly known as polygraph or lie detector operators. In essence, the act sets forth the conditions under which persons may be admitted to practice detection of deception with a polygraph, the standards they must observe and the types of polygraph devices that may henceforth be used lawfully. A violator of the act will be guilty of a misdemeanor punishable by a fine of not less than twenty-five dollars nor more than five hundred dollars or imprisonment for not more than six months, or both. The weakness of this act lies in the exceptions available under it. Exempted from all provisions of the act are examiners under the exclusive employment of the United States, the State of North Dakota or its agencies, or any county, municipality, or political subdivision of the state. It would seem that most operators administering the test would not be subject to the act. The exemption from licensing is reasonable, but the qualifications and testing requirements should apply to all operators within the state because the test's "validity rests almost wholly upon the competency and integrity of the operator".<sup>25</sup> Also exempt from the examination are licensed operators from states which have substantially equivalent requirements. This may be of limited scope because of the lack of legislation by other states in the area of detection device examiners.<sup>26</sup> The basis for the statute is timely, however. Although few courts have accepted polygraphic results in evidence,<sup>27</sup> there

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allowing the private association—the A.M.A. and the National Safety Council—to determine what shall constitute evidence in the courts of North Dakota. This has seemingly been remedied by having the state toxicologist determine what tests and methods will be approved, and therefore allowable into evidence.

25. Note, 41 CHI-KENT L. REV. 115, 117 (1964).

26. Three other states have similar polygraph licensing statutes. They are Illinois, Kentucky, and New Mexico. *Ibid.*

27. Only one case, *People v. Kenney*, 167 Misc. 51, 3 N.Y.S.2d 348 (1938), has unqualifiedly accepted lie detector evidence. This is of questionable significance, however, because of the defendant's acquittal and a subsequent contrary New York case handed down shortly thereafter. *People v. Forte*, 279 N.Y. 204, 18 N.E.2d 31 (1938). Polygraphic evidence has been allowed frequently under stipulations by both parties.

is a growing acceptability of the scientific data received from the devices.<sup>28</sup> It is not the machine that is unreliable, but rather the operators of the machine and the interpretation of the data acquired which cause the errors and inaccuracy that brings about the general rule of inadmissibility of polygraphic evidence. This statute attempts to minimize the chance of possible human error and therefore make the evidence possibly admissible. Although not going far enough, the act is a step in allowing a possibly valuable source of information and evidence to become more certain and obtain possible evidentiary significance. (N.D. Sess. Laws 1965, ch. 303).

#### OFFICES AND OFFICERS

*Uniform Facsimile Signatures Act*—North Dakota joined the growing list of states that have adopted the Uniform Facsimile Signatures of Public Officials Act<sup>29</sup> by enacting sections 44-08-12 through 15 of the Century Code. The act permits the use of facsimile signatures on public securities (bonds, notes, certificates of indebtedness and other obligations for the payment of money) and instruments of payment (checks, drafts, warrants or orders for payment, delivery or transfer of funds) issued by the state or any of its instrumentalities or subdivisions. At least one manual signature is required on securities, but not on interest coupons attached to such securities. The North Dakota law departs from the uniform act, which requires that all signatures be registered with a single designated state official, by providing that authorized officers of subdivisions may file their manual signatures with the clerks of such subdivisions. (N.D. Sess. Laws 1965, ch. 305).

#### PUBLIC UTILITIES

*Extension of Service*—In an attempt to solve territorial disputes between investor-owned public utilities and rural electric cooperatives often leading to duplication of facilities and ultimately higher costs to consumers, the Legislature amended section 49-03-01 to restrict public utilities from extending their services outside areas they have traditionally served. The act permits the public utilities to expand in and with the municipalities they serve, subject to limitations, while at the same time retaining such consumers as they already serve outside those municipalities. In effect, it allocates the rural areas to rural electric cooperatives, except that the public utilities may extend beyond the limits of municipalities by securing a cer-

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28. Most of the acceptance has been from academicians, who claim that the accuracy of the tests range anywhere from seventy-five per cent to eighty percent [HERRICK, UNDERHILL'S CRIMINAL EVIDENCE, 272 (5th ed. 1956) which uses a study done in 1942] to a more recent study which claims that the tests are ninety-five per cent accurate. [ARTHUR, *The Lic Detector—Is it of Any Value?* 24 FED. PROB. 36 (1960)].

29. 9B U.L.A. 9 (Supp. 1964).

tificate of public convenience and necessity, which the Public Service Commission is authorized to issue if the electric cooperative with the nearest lines consents or if the PSC finds that the cooperative is unable to provide the required service. The act limits a public utility's expansion of service within a municipality to the extent that it does not interfere with existing services provided by a rural electric cooperative or another public utility within such a municipality. The act gives a measure of advantage to the electrical cooperatives in comparison with pre-existing law, as the so-called anti-duplication provisions of section 49-03-01 had been interpreted in favor of the public utilities both as to extension of services within a territory already served and into territory contiguous to that being served.<sup>30</sup> (N.D. Sess. Laws 1965, ch. 319).<sup>31</sup>

*Transportation Safety Requirements*—In the field of safety rules and regulations governing rail and motor carriers, North Dakota's laws are sometimes inconsistent with Interstate Commerce Commission regulations. The Legislative Assembly attempted to eliminate many of these nonconformities by enacting section 49-18-46 which creates power in the Public Service Commission to prescribe safety rules and regulations pertaining to the operations of carriers subject to the provisions of chapter 49-18. In so doing the Commission may adopt in whole or in part the rules and regulations of the ICC. It was also felt that aside from eliminating the conflicts, greater flexibility could be attained in adapting such rules and regulations to the rapidly changing equipment and practices in this field.<sup>32</sup> The law repeals section 49-13-01 concerning the requirement of curtains and frost windows on locomotive engines, and section 49-13-03 which specifies sizes for railroad equipment. Also repealed were sections 49-18-27 through 49-18-30 which deal respectively with a motor vehicle driver's maximum duty time, age limit, medical examination, and quarterly report. (N.D. Sess. Laws 1965, ch. 322).

#### REAL AND PERSONAL PROPERTY

*Condominiums*—In 1961 the Housing Act authorized the FHA to issue mortgage insurance to persons “. . . for individually owned units in multi-family structures.” State condominium legislation has

30. *E.g.*, Cass County Electric Cooperative v. Otter Tail Power Co., 93 N.W.2d 47 (N.D. 1958), where the court held that a microwave station was within the territory already served by the investor-owned utility, even though its nearest service was almost a mile away, while an electric cooperative's line was just across the road from the station; and Williams Electric Cooperative Inc. v. Montana-Dakota Utilities Co., 79 N.W.2d 508 (N.D. 1956), where an investor-owned public utility was permitted to extend facilities into a continuous area which a cooperative claimed it was serving and which had been assigned to the cooperative and the company.

31. Portions of this act were held to be unconstitutional February 11, 1966, by District Judge W. C. Lynch in an action brought in Burleigh County District Court against the Public Service Commission and the electrical cooperatives by the public utilities in the state. The decision is expected to be appealed to the North Dakota Supreme Court.

32. Report of the North Dakota Legislative Research Committee, Thirty-ninth Legislative Assembly (1965).

grown rapidly since that time. The condominium is an apartment dwelling in which the individual owns a fee simple in his unit or apartment and holds an undivided interest as *attendant-in-common* in the common and limited common areas with the other unit owners in the condominium project.<sup>33</sup> North Dakota has taken the first step toward allowing the condominium owners to qualify for FHA mortgage insurance by passing this specific legislation.<sup>34</sup> This legislation also meets the federal requirements with respect to recordation, taxation, and other such areas. Although it is possible to have condominium ownership without specific legislation, such legislation is necessary in limiting uncertainty and controversy. An example of this is the partition of real property. North Dakota deals with the partition of condominium property in the condominium statute, and exempts such property from the other partition statutes. Condominium ownership is of primary interest to people in crowded urban areas, but there is a place for it in North Dakota. Examples lending themselves most readily to condominium ownership in this state presently are homes for retired persons and for the elderly. (N.D. Sess. Laws 1965, ch. 311).

*Termination of a State-Acquired Easement*—A temporary easement is required by section 47-01-22 to have a fixed termination date whenever acquired by the state of North Dakota, its agencies, or any political subdivision. The termination date must not be more than five years from the date of the easement. (N.D. Sess. Laws 1965, ch. 310).

*Uniform Gifts to Minors Act*—The Uniform Gifts to Minors Act<sup>35</sup> was amended throughout its several sections to bring savings and loan and building and loan associations within the provisions of the act. The association may be either state or federal if it is organized under title seven of the Century Code which deals with building and loan associations. To facilitate the change, the word “depository” is used throughout the chapter in place of the former usage of the word “bank”. Depository is then defined to include savings and loan and building and loan associations. (N.D. Sess. Laws 1965, ch. 313).

*Limiting Liability of Landowners*—To encourage the development of public recreational facilities, chapter 53-08 was adopted, limiting the liability of landowners who make their land and water areas and other property available to the public for recreational purposes by removing the common law obligations of a landowner toward invitees and licensees. The act does not apply to landowners who

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33. For a general understanding of condominium ownership see 15 AM. JUR. 2d 977 (1964).

34. N.D. CENT. CODE ch. 47-04.1 (1965).

35. N.D. CENT. CODE ch. 47-24 (1960).

charge for the use of their premises for recreational purposes or who willfully or maliciously fail to warn or guard against dangerous conditions. (N.D. Sess. Laws 1965, ch. 337).

#### SALES AND EXCHANGE

*Unfair Trade Practices*—Since 1941 North Dakota has had an Unfair Trade Practices Law,<sup>36</sup> provisions of which are similar to statutes of other states which were patterned after the federal Robinson-Patman Act of 1936.<sup>37</sup> Unlike the Fair Trade Law<sup>38</sup> which applies only to commodities under trademark, the trade practices act prohibits unfair, deceptive, unreasonable and discriminatory business practices and creates public policy for a fair and honest competitive market without monopolies.<sup>39</sup> The North Dakota courts have not reviewed the constitutionality of this act; however, similar acts have been upheld in federal and state courts as a valid exercise of police powers.<sup>40</sup> Although the 1941 act provided for a penalty and injunctive relief proceedings to be instituted by the attorney general or a states attorney, it was seldom, if ever, used to enforce fair trade practices. The 1965 Legislature sought to broaden the available remedy against violators by creating the North Dakota Trade Commission, consisting of five retail distributors and an executive secretary, to enforce the provisions of the act, conduct hearings and investigations, and establish cost surveys. (N.D. Sess. Laws 1965, ch. 330).

*Fair Trade Law*—A provision in section 51-11-04 of the Code has been deleted to remove liability for a suit for unfair competition from a person not a party to a contract pursuant to provisions of the chapter but adds section 51-11-02.1, which provides that a contract shall result upon annual notification from a producer to a buyer of items allowed to be sold at a stipulated price and sale of such commodities by the buyer upon receipt of the notice. (N.D. Sess. Laws 1965, ch. 331).

*Consumer Fraud*—A new chapter of the Code, 51-15, was enacted by the Legislature, making unlawful any misrepresentation in connection with the sale or advertisement of merchandise with the intent that others rely thereon, regardless of whether others do, in fact, rely thereon or are damaged thereby, and providing for investigation by the attorney general preliminary to issuance of an injunction to prohibit continuance of acts found to be in violation of the law. (N.D. Sess. Laws 1965, ch. 332).

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36. N.D. CENT. CODE ch. 51-10 (1960).

37. 15 U.S.C. § 13 (a)(b) (1964).

38. N.D. CENT. CODE ch. 51-11 (1960).

39. N.D. CENT. CODE § 51-10-03 (1960).

40. *Central Lumber Co. v. South Dakota*, 226 U.S. 157 (1912); *Wholesale Tobacco Dealers Bureau v. National Candy & Tobacco Co.*, 11 Cal. 2d 634, 82 P.2d 3 (1938).

## STATE AND LOCAL GOVERNMENT

*Pre-Legislative Orientation and Organization Conference*—It is becoming increasingly difficult to complete legislative work in the limited 60-day session under existing North Dakota law to give full and adequate consideration to each of the bills and problems which arise in the assembly. Frequently, legislators have been forced to hold over-time sessions, accomplished through the device of covering the clock.<sup>41</sup> The past legislative assembly has made an effort to alleviate this problem by means of a pre-session orientation conference which is set out in chapter 54-43.1. The law provides for a three-day meeting of legislators for organization and orientation in advance of the regular session. Also proposed is a constitutional amendment, which must be approved in next year's general election, by which the pre-session meeting would be a part of the actual meeting of the legislative assembly. This would preclude all pre-session work having to be formally confirmed when the session actually commences. (N.D. Sess. Laws 1965, ch. 342 and ch. 483, §12).

*Calling of a Special Legislative Session*—Under the present law,<sup>42</sup> only the governor can call the Legislature into a special session and then only on extraordinary occasions. It was felt that the Legislature itself should also have the power to assert the system of checks and balances in case a governor should fail to act.<sup>43</sup> This procedure will be instituted both by constitutional amendment and by statute; it therefore will not become effective until approved by the voters in the November general election. The procedure, set up by section 54-03-23, calls for a poll of all the representatives and senators when one-sixth of the members make a written request to the Legislative Research Committee to do so. If two-thirds of the members of the Legislature approve the calling of such a special session, it will be set up at the time requested of the Legislative Research Committee. The sessions of the Legislature will continue to be held biennially but the new constitutional amendment will enable the Legislature to permit annual assemblies if it becomes necessary. (N.D. Sess. Laws 1965, ch. 341 and ch. 483, §31).

*Municipal Judge*—The title of "police magistrate" has been changed to "municipal judge" by chapter 40-18 of the Century Code. The qualifications of a municipal judge have also been upgraded in that the judge must be an attorney licensed to practice law in

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41. In West Virginia the Supreme Court broke precedent and took cognizance of over-time legislative sessions and invalidated some measures passed during an over-time session. *State v. Winters* 14 W. Va. 861, 132 S.E.2d 374 (1963).

42. N.D. CONST. § 75.

43. Report of the North Dakota Legislative Research Committee, Thirty-ninth Legislative Assembly P. 21 (1965).



North Dakota if the city or village of which he is judge has a population of 3,000 persons or more and if such a person is available in the city or village. (N.D. Sess. Laws 1965, ch. 286).

*Industrial Development*—By an amendment to section 40-57-02 of the Code, counties are now included in the term “municipalities”. Counties are thus authorized to engage in projects available under the Municipal Industrial Development Act. Also defined by the amendment is the term “project”, which now includes real property, buildings and improvements, and any equipment located permanently thereon used in connection with revenue producing enterprises. The authorization to sell a project to a lessee under an option granted in the lease and to allow a lease to construct, acquire, and install buildings, improvements or equipment to be included in a project by any means available to the lessee, are granted by an amendment to section 40-57-02. Also authorized by this same bill was the private or public sale of revenue bonds to help finance a project under the Industrial Development Act at not less than ninety-five per cent of par, plus any accrued interest. (N.D. Sess. Laws 1965, ch. 294).

*Exemptions from Taxation Under the Municipal Industrial Development Act*—Under previous law no municipally-acquired project under the Municipal Industrial Development Act was exempt from taxes. In 1965 the Legislature amended section 40-57-17 to exempt from state taxation for five years a leasehold granted by a municipality and all other personal property used by the lessee in connection with a project initiated under the Act. Any corporate lessee under such leasehold is also exempt from payment of corporate income taxes from income attributable to the business on the premises for a period of five years. The leasehold which is granted by the municipality under chapter 40-57 is classified as personal property by this particular statute. The exemption apparently dates from the granting of the leasehold and commencement of business operation, rather than from the effective date of the statute.<sup>44</sup> (N.D. Sess. Laws 1965, ch. 295).

*County Governmental Reorganization*—County consolidation statutes have been on the books since 1933<sup>45</sup> and alternative forms of county government have been available since 1941,<sup>46</sup> but consolidation has been rarely attempted and never has a county proposed trying one of the optional forms of government.<sup>47</sup> Since consolidation

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44. North Dakota attorney general's opinion to Lloyd Omdahl, Tax Commissioner, November 29, 1965. In the same opinion, it was stated that the statute would not prevent leasing a plant to a former owner of such plant.

45. N.D. SESS. LAWS 1933, ch. 92.

46. N.D. SESS. LAWS 1941, ch. 131 and 132.

47. Report of the North Dakota Legislative Research Committee, Thirty-ninth Legislative Assembly (1965).

and other forms of governmental reorganization should appeal to sparsely settled areas, the Century Code has been amended and enlarged to facilitate and encourage their adoption. Chapter 11-05.1 authorizes any citizen who submits petitions signed by twenty per cent of the electorate of the county voting for governor at the last general election to require the board of county commissioners to create a county consolidation committee to study the matter of consolidation or adoption of an optional form of government. The commissioners also may form such a committee upon their own initiative. If, after holding public meetings, the committee agrees upon a plan, the board of county commissioners is required to submit the plan to the electorate. The commissioners also, upon their own motion, may submit to the voters the question of selecting a new form of county government, but not the question of consolidation. Chapter 11-05 is revised to provide for an election in counties affected by a consolidation plan, whereby a favorable vote of fifty-five per cent in such counties would be sufficient for approval of consolidation. Also amended is chapter 11-09 in that it changes the form of office of county manager from a strictly appointive position to either an elective or appointive office. (N.D. Sess. Laws 1965, ch. 98).

*Modern Council Form of City Government*—In response to a proposal of the League of North Dakota Municipalities, the Legislature enacted chapter 40-04.1, providing for new forms of city government consisting of city councils of five, seven or eleven members. The act allows for election of members both at large and by wards and offers cities a wider latitude of choice in selecting a form of municipal government. It has been criticized, however, because of its failure to make adequate provision for executive leadership.<sup>48</sup> (N.D. Sess. Laws 1965, ch. 285).

*Municipal Bonds*—In anticipation of the repeal of all or part of the personal property tax and the problems that elimination of such tax would create in future bond financing, the Legislature amended sections 21-03-04 and 21-03-06 to increase the limitations on funded indebtedness for cities, school districts, counties, townships and park districts. The act provides the means for adjusting to personal property tax repeal within the bonding mechanism itself without creating burdensome problems for new bond issues. In addition to the adjustment of the limitations on bond issues, the act amends section 21-03-15 to provide that in addition to property taxes other moneys provided by, or sources of revenue authorized by, the legislature may be pledged by a municipality for payment

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48. See Villanueva, *Towards Home Rule for North Dakota Cities*, 42 N.D. L. Rev., Guest Editorial (1966).

of obligations upon outstanding bonds. The latter provision is probably significant only if there is a total or partial personal property tax repeal, for otherwise it is not likely that the legislative assembly will provide any other moneys or authorize any other sources of revenue. If the proposed constitutional amendment granting home rule to cities<sup>49</sup> is approved by the voters in November, this act, along with other sections in title 21 on Government Finance, will need revision so as not to apply to home rule cities. In addition, section 21-03-06 (7) (b) has been amended by adding a provision authorizing municipalities to borrow money, subject to limitations previously expressed, to refund outstanding general obligation bonds in advance of maturity. (N.D. Sess. Laws 1965, chs. 182 and 183).

*Redefinition of "City"*—The term "city" as used in the state housing authorities law has been redefined by section 23-11-01 (2) of the Century Code to mean any city having a population of more than 1,000 (under prior law it was 5,000), but excluding those cities of less than 5,000 population in counties with an active housing authority or which have agreed to participate in a county housing authority program pursuant to section 54-40-08. (N.D. Sess. Laws 1965, ch. 192).

*Sheriffs' Fees*—The trend of an inflationary economy is evident even in the rising cost of governmental services. The Legislature amended section 11-15-07 to increase the fees a sheriff shall charge and collect on behalf of the county for services he has rendered in his official capacity. (N.D. Sess. Laws 1965, ch. 102)

#### TAXATION

*Taxpayer's Right to a Hearing and Appeal*—A taxpayer now has a right to a hearing before the tax commissioner and to appeal from that hearing when any tax law is administered, when any tax is collected or certified by the tax commissioner, or when the commissioner is authorized to assess or determine the tax liability that is in addition to that reported by the taxpayer. The provisions of the Administrative Agencies Practice Act<sup>50</sup> relating to the proceedings before an administrative agency are to govern the notice of hearing, the hearing itself, and the right to appeal from the tax commissioner's decision. The purpose of this newly enacted section of 57-01-11 is to give every taxpayer the right to a hearing before the tax commissioner along with the right to appeal to the courts from his decision unless a tax law expressly provides otherwise. (N.D. Sess. Laws 1965, ch. 385).

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49. N.D. SESS. LAWS 1965, ch. 480.

50. N.D. CENT. CODE ch. 28-32 (1960).

*Disabled Veteran's Homestead Exemption from Property Assessment*—The amount of property valuation and the veteran's qualifications have been changed by the legislature to the extent that real property used and owned as a homestead up to a net assessed valuation of \$4,000 or personal property up to a net assessed valuation of \$4,000 is exempt from the general property assessment. Previously subsection twenty of section 57-02-08 excluded personal property as an alternative exemption. Only those veterans with a service-connected disability greater than fifty per cent are now eligible for such exemption whereas all disabled veterans had been eligible before. The widow of a deceased veteran, who would have qualified under the present provisions, may now also claim this assessment tax exemption. These qualifications are further limited, however, in that the veteran and his wife, or his unremarried widow cannot earn more than \$3,000 net income in any one year. (N.D. Sess. Laws 1965, ch. 387).

*Personal Property Tax Exemption of Farm Machinery*—The value of farm machinery that is used or rented by an individual for farming purposes on which a sales or use tax has been paid is now exempt from the personal property tax that would otherwise have been assessed against it in the first year after it was purchased. The 1965 Legislature significantly changed section 57-02-20 by including in this exemption farm machinery which is not only used but also rented by an individual in his farming operations. In order to qualify for such an exemption, however, the individual must exhibit to the assessor satisfactory written proof on a specified form furnished by the tax commissioner that the sales or use tax has already been paid on the machinery. The previous requirement that such machinery be purchased after August first has also been deleted from this section so as to allow the machinery to qualify for the exemption irrespective of what time of the year it was purchased or rented. (N.D. Sess. Laws 1965, ch. 389).

*Appeals to and Hearings Before the State Board of Equalization*—The owner of any assessed real estate or personal property may now appeal such assessment to the State Board of Equalization providing he has first appealed to the district and county board of equalization in which it was originally assessed. This provision was enacted by creating an entirely new subsection to section 57-12-06. The State Board of Equalization's general duties and power under section 57-13-04 have also been changed to the extent that it now has the power to equalize the property assessment between assessment districts of the same county and between the different counties of the state. Prior to the passage of this legislation it could only equalize values between townships, cities and villages

within the same county. The township supervisors have now been added to the list of governing bodies that have a right to a hearing before the State Board of Equalization for the purpose of opposing any change in the assessed valuation of such represented unit. (N.D. Sess. Laws 1965, ch. 392).

*Notice of Increased Assessment*—Any assessor or county board of equalization that has increased the assessed valuation of any real estate by more than fifteen per cent, with no taxable improvements having been made since the prior assessment, must now send written notice of the amount of such increase along with the amount of the last assessment to the property owner at his last known address. This provision as set forth in the newly enacted section of 57-12-09 has been interpreted by the North Dakota attorney general<sup>51</sup> to mean that such notice will also have to be given to the real estate owner if the combined assessments of the assessor and the county board of equalization amount to more than a fifteen per cent increase in the assessed valuation even if the individual amounts fail to reach this prescribed increase. (N.D. Sess. Laws 1965, ch. 398).

*Emergency Tax Levies*—Any municipal corporation is now authorized to levy up to one mill for emergency purposes which may be in addition to the levy restrictions prescribed by law. The authorization, however, needs a two-thirds vote of the governing body and the fund may not accumulate to more than three dollars per capita. This newly enacted legislation is set out in section 57-15-48 of the Code. (N.D. Sess. Laws 1965, ch. 396).

*Abatement and Refund Procedures*—The Legislature substantially changed certain abatement and refund procedures in that it is no longer necessary to pay a tax under protest to be able to file an abatement application for over-assessment under section 57-23-03. It is also no longer necessary to file an application for abatement of *special* assessments to the tax commissioner, because sections 57-23-06 and 57-23-08 of the Code now permit such an application to be finalized by the board of county commissioners. The same situation applies to general abatement or refund applications where the reduction is less than \$100 of the net assessed taxable valuation. (N.D. Sess. Laws 1965, ch. 398).

*Taxation of Rural Electric Cooperatives by Cities or Villages*—The taxes imposed upon rural electric cooperatives have been substantially changed in that cities and villages may assess and collect taxes upon cooperative property within the city limits for the priv-

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51. North Dakota Attorney General's opinion to Lloyd Omdahl, Tax Commissioner, June 3, 1965.

ilege of distributing and furnishing power to consumers within that city. As amended and reenacted, section 57-33-04 of the Code grants to the local assessing officer the responsibility to determine annually the value of the cooperative distribution system within the geographic limits of the city. Such valuation must be substantially equal to the amount at which it would be valued pursuant to the assessment and taxation of the public utilities provisions of chapter 57-06. After the value has been determined, the city assessing officer must give the cooperative mailed notice of the amount of the valuation and specify a day on which it may present to the city governing body information relating to the amount and value of its taxed property. Within ten days thereafter the city must notify the cooperative of the amount and value of its tax and before the tax becomes due the cooperative may appeal this decision to the county district court in which the city or village is located. The mechanics for computing this tax are also set forth within the provisions of this section. (N.D. Sess. Laws 1965, ch. 399).

*Electric Cooperative Excise Tax Exemption*—The license fee of ten dollars for each one hundred members or a fraction thereof which has been assessed on electric cooperatives under section 10-13-07 of the Code has been abolished by the Legislature, but such cooperatives are now subject to excise taxes from which they had previously been exempt. (N.D. Sess. Laws 1965, ch. 97).

*Rural Telephone Association Taxation*—Based upon a Legislative Research Committee recommendation<sup>52</sup> the legislature amended and reenacted chapter 57-34 of the Code which provides for the taxation of mutual and cooperative telephone associations and private or commercial telephone companies exclusively engaged in providing telephone services to rural areas and cities and villages with a population of 500 or less. Now each company must file with the tax commissioner and the county auditor of each county in which it is operating on or before the first of May of each year, a report listing its operating receipts for the preceding year, the number of stations operated, the miles of line and any other requested information. The tax commissioner then computes the tax to be assessed against each company on the basis of a percentage of gross receipts with the amount of such percentage depending upon the number of phones per mile of line. After the gross receipts tax is computed under this system it is compared with a flat rate of fifty cents per phone and the larger amount is then levied against the company. The taxes imposed under this chapter are

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52. For a more detailed analysis and background of this act see, Report of the North Dakota Legislative Research Committee, p. 127 (1965).

in lieu of real and personal property taxes levied by the state or political subdivisions. The sales and use tax exemption for mutual and cooperative telephone companies was also removed by the Legislature. (N.D. Sess. Laws 1965, ch. 401).

*Definition of Life Insurance for Gross Estate Tax Purposes*—The Legislature has now included in the decedent's gross estate, life insurance proceeds receivable by all other beneficiaries under a policy on the decedent's life with respect to which he possessed any of the incidents of ownership exercisable either alone or in conjunction with any other person. The term "incident of ownership" now includes a reversionary interest if the value of such interest exceeded five per cent of the value of the policy immediately before the death of the decedent. Within the provisions of this section reversionary interest includes the possibility that the policy or its proceeds may return to the decedent's estate or may be subject to a power of disposition by him with its value being determined by the use of mortality tables, actuarial principles and other methods prescribed by the tax commissioner. This revision and clarification now conforms section 57-37-02 of the North Dakota Century Code with the federal law.<sup>53</sup> (N.D. Sess. Laws 1965, ch. 406).

*Estate Tax Paid on Prior Estate*—Only the taxes that have been paid pursuant to the estate tax provisions of chapter 57-37 of the Code are now allowed as a credit for an estate tax paid on property of a prior gross estate which is included again in the gross estate of a second decedent. Previously section 57-37-09 allowed a credit for any and all taxes paid on property included in a prior estate. (N.D. Sess. Laws 1965, ch. 408).

*Surviving Spouse Exemption*—In computing the surviving spouse's exemption for determining the adjusted gross estate, section 57-37-11(2) (h) of the Code now permits deduction of state and federal income taxes on the income of the decedent to the date of his death, inheritance taxes paid or payable to other states on intangible personal property and death duties paid to foreign countries on intangible personal property. Along with these new deductions, those previously specified under this subdivision also remain in effect. (N.D. Sess. Laws 1965, ch. 409).

*Property Appraisals for Estate Tax Purposes*—The Legislature has substantially changed the method of appraising all property for estate tax purposes by allowing (as an alternate method of valuation) property disposed of within one year of the decedent's death to be valued as of the date of such disposition. If the gross estate property is not so disposed of within one year after the decedent's death,

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53. 26 U.S.C. § 2042 (1955).

it will then be valued as of the date one year after his death. Previously all assessments were to be made upon appraisal of the full and fair cash value of the property to be transferred as of the date of the decedent's death, and for the property not so transferred the range and value of its fluctuations were to be considered for a period of time not exceeding six months before or after his death. This new alternate method of valuation provided for in section 57-37-21 somewhat conforms the North Dakota estate tax provisions to that of the federal law.<sup>54</sup> (N.D. Sess. Laws 1965, ch. 410).

*Liens for Estate Tax Purposes*—The tax liens on real estate that may have attached under any of the various inheritance tax laws that were in effect prior to the time our present estate tax act became effective in 1927 are now terminated by the addition of subsection 5 to section 57-37-23 of the Code. A 1957 amendment to this section provided for the termination of estate tax liens ten years after they had attached for unpaid taxes imposed by the present estate tax chapter of 57-37. Prior to the present amendment, however, no law had expressly terminated liens that had attached to real estate under the inheritance tax laws in effect prior to 1927. This is often regarded as a cloud on the title of real estate with no real way of knowing whether any taxes under these old laws might still be due. The passage of an additional subsection to this act, however, now does away with this problem. (N.D. Sess. Laws 1965, ch. 411).

*Due Dates for Remittance of the Use Tax*—When there is a sale or discontinuance of any business by a retailer who is required to collect a use tax, it now becomes due immediately prior to such sale or discontinuance, and if not paid within fifteen days thereafter it becomes delinquent and subject to the penalties set forth in section 57-40-18. Before section 57-40-06(4) was amended it did not specifically provide for remittance of the use tax under these circumstances, so the retailer had to pay the tax in the usual method of quarterly installments on or before the last day of the month next succeeding each designated quarterly period. (N.D. Sess. Laws 1965, ch. 436).

*Use Tax Credits*—The use tax credit of section 57-40-10 is substantially the same as before except that a credit is not only allowed for a similar use tax which is paid to other states, but it is also allowed if the tax is paid to the political subdivisions of such states, providing the previously enacted reciprocity requirements of this section are met by the taxing state. (N.D. Sess. Laws 1965, ch. 437).

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54. 26 U.S.C. § 2032 (1955).



**Motor-Vehicle Excise Tax**—The legislative purpose of amending and reenacting section 57-40.1-02 of the Code was to provide for the imposition of an excise tax on occasional or casual sales of motor vehicles between private parties. Following the definition of certain words and phrases as they are used in this section, the act provides for certain procedures that must be carried out by the buyer and seller in meeting the taxing requirements. Before any title or license registration will be issued the purchaser of any motor vehicle is now required to furnish a “motor vehicle purchaser’s certificate” to the motor vehicle registrar and pay the tax which is imposed by the provisions of this act. Any motor vehicle upon which the retail sales tax (now the use tax) has been paid by the retailer is exempt from the provisions of this act providing the purchaser furnishes to the registrar a certificate from a retailer in the state certifying that such retailer has paid the tax as prescribed by the use tax provisions. (N.D. Sess. Laws 1965, ch. 432).

**Payment of Oil and Gas Production Tax**—The due dates and delinquent dates for paying gross production taxes and for the filing of reports by producers, purchasers and carriers pursuant to the provisions of the oil and gas production tax law have been modified to the extent that all taxes and reports which are required to be paid and filed under sections 57-51-05,06 and 07 must now be paid or filed on or before the 45th day following the preceding designated quarterly period. If such requirements are not met by that date they will be considered to be delinquent. The tax commissioner is also given the power to grant an extension of time up to fifteen days for paying the tax and if the extended time period is granted, it will not become delinquent until that period has ended. (N.D. Sess. Laws 1965, ch. 440).

**Uniform Division of Income Tax Act**—This act provides for the uniform division of income tax for taxpayers engaged in multi-state business activities. The Legislature adopted the act from the Uniform Division of Income for Tax Purposes Act which was approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1957.<sup>55</sup> Up to the present time only Alaska,<sup>56</sup> New Mexico,<sup>57</sup> Arkansas,<sup>58</sup> and North Dakota<sup>59</sup> have adopted this act which is the result of conferences with the representatives of the Controller’s Institute of America, The Council of State Governments, and various interested individuals who recognized the need for a uniform method of division

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55. 9A U.L.A. 448 (1965).

56. ALASKA STAT. 43.20.050 to 43.20.150 (1959).

57. N.M. STAT. ANN. § 72-15A-16 to 72-15A-36 (1965).

58. ARK. STAT. ANN. § 84-2065 to 84-2073 (1961).

59. N.D. CENT. CODE § 57-38.1-01 to 57-38.1-21 (1965).

of income for tax purposes among the several taxing jurisdictions since there seemed to be no other practical means of assuring that a taxpayer is not taxed on more than his net income.

The act defines terms such as business income, commercial domicile, compensation, non-business income, and sales. A taxpayer is taxable in another state if in that state he is subject to a net income tax, a franchise tax, a corporate stock tax, or if that state has jurisdiction to subject him to a net income tax regardless of whether or not it actually does tax him. Net rents and royalties from real property located in North Dakota are allocable to this state along with net rents and royalties from tangible personal property to the extent that the personal property is utilized in this state, or in their entirety if the taxpayer's commercial domicile is in this state and he is not organized under the laws of or taxable in the state in which the property is utilized. Capital gains and losses from sales of real property located in North Dakota are also allocable to this state along with capital gains and losses from sales of tangible personal property if such personal property has a situs in this state at the time of the sale, or if the taxpayer's commercial domicile is in this state and he is not taxable in the state in which the property had a situs. Under this act compensation is paid in North Dakota if the individual's service is performed entirely within the state or if its performance outside the state is incidental to the individual's in-state service. Sales of tangible personal property are made in North Dakota if the property is delivered or shipped to a purchaser within this state, or if the property is shipped in this state and the purchaser is the United States Government or the taxpayer is not taxable in the state of the purchase. Sales to the federal government are treated separately in this act because they are not necessarily attributable to a market existing in the state to which the goods were originally shipped. All other types of sales are deemed to be made in this state if the income-producing activity is performed in North Dakota or if a greater proportion of such activity is performed in this state than in any other state.

If the provisions of this act do not fairly represent the extent of the taxpayer's business activity in North Dakota, he may petition the tax commissioner for the employment of any other method to effectuate an equitable allocation and apportionment of his taxable income. These provisions are to apply to all income accruing after January 1, 1965, for taxpayers operating on a calendar year basis, and to income accruing in 1965 after the beginning of their fiscal year for taxpayers operating on a fiscal year basis. (N.D. Sess. Laws 1965, ch. 419).

*Alcoholic Beverage Tax Exemption*—To limit a state excise tax

exemption on the shipment of up to one wine gallon of alcoholic beverages into North Dakota from foreign countries, a practice previously permissible under section 5-03-06 of the Code, the Legislature has added the provision that such alcoholic beverages must be in the personal possession of the individual at the time of his entry for the exemption to apply. (N.D. Sess. Laws 1965, ch. 79).

#### WELFARE

*Employment Security Bureau*—One of the many governmental reorganization bills introduced during the 1965 session of the legislative assembly revised title 52 of the Century Code to create the North Dakota Employment Security Bureau. Placed under the new bureau were the state employment service and unemployment compensation divisions, which formerly were units of the North Dakota Workmen's Compensation Bureau. (N.D. Sess. Laws 1965, ch. 333).

*State Records*—Because the language of section 23-02-23 of the Century Code was questionable regarding the authority of state's attorneys, public welfare boards and even the attorney general to secure confidential information from the state registrar of vital statistics, that section has been amended to confer such authority when the information sought is to be used for official business. Such information could be secured through a court order but the process is cumbersome and must be shown to be necessary to litigation pending in court. Since there are instances when information retained by the registrar of vital statistics is necessary for a determination as to whether a welfare applicant is eligible for assistance or whether it is advisable to take legal action against or in behalf of a welfare recipient, the change is of importance to the above-mentioned officials and agencies. (N.D. Sess. Laws 1965, ch. 189).

#### WORKMEN'S COMPENSATION

*Definition of "Employee"*—Appointed officials of the state and its political subdivisions have been brought under the general provisions of the state workmen's compensation act by redefinition of the term "employee" in section 65-01-02(5) (a) (1) of the Century Code. Under pre-existing law the term included elected but not appointed state and local officials. (N.D. Sess. Laws 1965, ch. 451).

*Increase in Benefits*—The maximum weekly payment to a totally disabled employee under the workmen's compensation act has been increased from sixty dollars to sixty-five dollars, including allowances for dependent children, by amendment of section 65-05-09

of the Code. Also amended was section 65-05-11, which increased the maximum weekly compensation for total and partial disability from forty-five to fifty dollars. (N.D. Sess. Laws 1965, ch. 456).

*Allowances for Death Claims*—Changes in section 65-05-16 of the Code result in simplified payment schedules to the widow, widower, and children of an employee whose death qualifies them for benefits under the act, and in discontinuance of payments to parents, brothers, sisters, grandparents or grandchildren who were dependent upon the deceased employee. (N.D. Sess. Laws 1965, ch. 457).

*Subrogation Rights*—Because pre-existing law created obstacles to out-of-court settlement, section 65-01-09 has been amended to limit the workmen's compensation fund to fifty per cent of damages recovered, up to a maximum of the total amount paid or to be paid in compensation or benefits, when it is subrogated to the rights of an injured employee for an injury that created liability for damages in a third party. Previously, the workmen's compensation bureau had to recover all of its expenditures before any money would go to an injured claimant in an action against a third party. For that reason a claimant frequently would refuse settlement when the offer would no more than cover payments made by workmen's compensation. In fairness to claimants it should be pointed out that the maximum benefits under workmen's compensation covered only hospital and medical expenses and certain living expenses but included no consideration for such factors as pain and suffering. It is now hoped that claimants will not force trial of a suit against a third party where a reasonable settlement offer has been made as the claimant will share in at least half the settlement. (N.D. Sess. Laws 1965, ch. 452).

*Appeals*—The inconvenience of sending a case back to the workmen's compensation bureau for determination of additional facts following an appeal is ameliorated by adding to section 65-10-01 a provision that any appeal to the district court shall be heard on the record transmitted from the bureau, but giving the court, in its discretion, power to seek additional evidence as to questions of law involved in the appeal. (N.D. Sess. Laws 1965, ch. 458).

EDWIN M. ODLAND

JEROME L. LARSON

ROBERT A. WHEELER