

**OPINION
71-374**

September 28, 1971 (OPINION)

The Honorable Donald C. Holand

State Senator

Fargo, ND

RE: Statutes - Responsible Relatives - Retroactive Effect

This is in response to your request for an interpretation of Section 25-09-04 of the North Dakota Century Code. This section was amended by the Legislative Assembly in 1971.

The pertinent provision of this section prior to the amendment read as follows:

"* * *For the purposes of this chapter and title 25 of this code 'responsible relatives' shall mean the patient's spouse, father, mother or children."

The 1971 Legislative Assembly by Chapter 275 amended Section 25-09-04 and as is material here now provides as follows:

"* * *For purposes of this chapter and title 25 of this code, 'responsible relatives' shall mean the patient's spouse, father, or mother. In no event, however, shall responsible relatives be required to pay such costs for children upon reaching their twenty-first birthday."

It is noted that the major difference is that in the amendment the word "children" is deleted. Also, a new sentence is added, but same is not pertinent to the question.

Chapter 275 does not use any introductory language, language in the title or in the body of the act which would indicate a legislative intent that its provisions should have a retroactive application.

With particular reference to Section 25-09-04, the introductory language is merely that the section is amended and reenacted.

Section 1-02-10 of the Code provides as follows:

"No part of this code is retroactive unless it is expressly declared to be so."

The North Dakota Supreme Court has ruled that this statutory provision applies to future amendments to the Code. Chapter 275 of the Legislative Assembly of 1971 is an amendment to the Code.

82 Corpus Juris Secundum, page 981 states in substance that retrospective or retroactive legislation is not favored and that it is a well-settled and fundamental rule of statutory construction, that all statutes are to be construed as having only a prospective

operation. This authority on page 414 further states that statutes generally will be held to operate prospectively unless the purpose and intention of the legislature to give them a retrospective effect clearly appears or is clearly expressed. The intent must be obvious, unequivocal, or unmistakable. The same authority continues further by saying it must be distinctly, undisputably, manifestly, most positively, most explicitly, plainly, unambiguously shown that it is to have a retroactive application before such construction can be given to a statute. It further provides that doubt must be resolved against the retroactive or retrospective effect. The same authority continues on page 996 by stating the following:

"Furthermore, a statute will not be construed to operate retrospectively so as to take away a penalty or condone a crime unless such intention is clearly expressed."

These concepts have been adhered to by the North Dakota Supreme Court in numerous decisions and as late as September 1, 1971, in the case entitled Catherine Heddon v. North Dakota Workmen's Compensation Bureau and Grafton State School, an agency of the state. In this case in the syllabus, the court stated as follows:

- "1. No part of the North Dakota Century Code is retroactive unless it is expressly declared to be so.
2. An Act of the Legislature is presumed to be prospective unless the Legislature clearly manifests of contrary intention."

It is therefore our opinion that Section 25-09-04 as amended by Chapter 275 of the 1971 Session Laws operates prospectively only and does not have a retroactive or retrospective application. The law went into effect on July 1, and its new provisions would be applicable from that date forward.

HELGI JOHANNESON

Attorney General