

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIARY COMMITTEE

Monday and Tuesday, October 12-13, 1998
Norse Room, International Inn, Minot and
Room 125, Nelson Science Center, MSU-Bottineau,
Bottineau, North Dakota

Senator Wayne Stenehjem, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Wayne Stenehjem, Carolyn Nelson, Rolland W. Redlin, John T. Traynor, Darlene Watne; Representatives Charles Axtman, Duane L. DeKrey, Lois Delmore, G. Jane Gunter, Kathy Hawken, Roxanne Jensen, Scot Kelsh, William E. Kretschmar, Andrew G. Maragos, Shirley Meyer, Darrell D. Nottestad, Leland Sabby, Allan Stenehjem, Gerald O. Sveen

Members absent: Senator Marv Mutzenberger, Representative Paul Murphy

Others present: See attached appendix

APPROVAL OF MINUTES

It was moved by Senator Nelson, seconded by Representative Delmore, and carried on a voice vote that the minutes of the August 17-18, 1998, meeting be approved as distributed.

CHARITABLE GAMING STUDY

Statutory Provisions on Conduct and Play

At the request of Chairman Stenehjem, committee counsel presented a bill draft regarding changes to statutes affecting games of chance. She said the bill draft would remove the limitation that a licensed organization may only play poker on two occasions per year. She also said the bill draft contains changes to the game of twenty-one.

At the request of Chairman Stenehjem, Mr. Tom Kelsch, a representative for the Charitable Gaming Association of North Dakota, provided testimony in support of the bill draft. He said the changes proposed in the bill draft would remove some of the restrictive language for certain games of chance and would allow the Gaming Commission to adopt the rules for those games. He said the Gaming Commission could react more quickly to changes in the economy and in the gaming industry rather than waiting two years to change a statute in the next legislative session.

Mr. Kelsch also distributed an amendment that would replace Section 3 of the bill draft. He said the amendment, which deals with rules for the game of poker, makes a distinction between traditional straight

poker and certain poker variations. He said the amendment would allow variations of poker if the variations were approved by the Gaming Commission. A copy of the proposed amendment is on file in the Legislative Council office.

In response to a question from Representative Sveen, Mr. Kelsch said all restrictions on games of chance which are in statute are also in the administrative rules. He said removing the restrictions from the statutes would not affect how the games are played unless the Gaming Commission changes the rules.

In response to a question from Senator Stenehjem, Mr. Kelsch said the charitable gaming industry is stagnant. He said the changes to poker and twenty-one, if passed, would give the charitable gaming industry a boost. He said pull tab machines are keeping the gaming proceeds somewhat level.

At the request of Chairman Stenehjem, Mr. Rick Stenseth, Charitable Gaming Association of North Dakota, answered questions for the committee. In response to a question from Representative Hawken, Mr. Stenseth said approximately eight percent of each dollar wagered goes to charity and 80 percent is paid out in the form of prizes. He said charitable gaming is one of the highest taxed industries in the state.

In response to a question from Representative Delmore, Mr. Stenseth said although variations of the games of poker and twenty-one may be an expansion of gaming, the bill draft does not propose an increase in bet limits nor does it propose electronic or video gaming.

At the request of Chairman Stenehjem, Mr. Chuck Keller, Gaming Division, Attorney General's office, provided testimony regarding the bill draft. Mr. Keller said the Attorney General's office opposes the provisions in the bill draft which remove the law that prescribes how two organizations may conduct gaming at a site at the same time or on the same day and the provision that removes the law that defines how a merchandise prize is valued. He said the Attorney General's office is neutral on the provision in the bill draft that removes the limit on the number of times poker may be conducted each year. He said the proposal would allow variations of poker and would be considered an expansion of gaming. He also said the Attorney General's office is neutral on

the proposal to remove several standard rules of conduct and play on the game of twenty-one. He said the proposal in the bill draft would allow variations of games of twenty-one and would be considered an expansion of gaming. He said the Attorney General's office would support the remainder of the proposed changes in the bill draft. Mr. Keller submitted a written critique of the bill draft, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Kretschmar, Mr. Keller said many of the provisions in the bill draft regarding changes to various games of chance, including poker and twenty-one, could be addressed by administrative rule.

In response to a question from Representative Nottestad, Mr. Keller said when a player wins merchandise, the player is given a tax form that states the retail value of the prize, not the price paid by the organization for the prize. He said merchandise is often donated; therefore, the cost to the organization would be zero.

In response to a question from Senator Watne, Mr. Keller said changes to the game of twenty-one, as allowed for in the bill draft, would be determined by the Gaming Commission.

In response to a question from Representative Hawken, Mr. Keller said the \$3 million decrease in charitable gaming since 1994 could be attributed, in part, to the tribal casinos.

In response to a question from Representative Kretschmar, Mr. Keller said the tribal casinos have a \$50 bet limit on twenty-one and a \$5 bet limit on poker.

In response to a question from Senator Traynor, Mr. Keller said the Governor's office is in the process of renegotiating the tribal-state gaming compacts, the first of which will expire in 2001. He said the goal of the Governor's office is to have all tribes agree to the same conditions, games, and bet limits in the new compacts.

It was moved by Representative Sveen, seconded by Representative Kretschmar, and carried on a voice vote that the amendment to the bill draft proposed by Mr. Kelsch be approved.

It was moved by Representative Stenehjem, seconded by Representative Maragos, and carried on a roll call vote that the bill draft, as amended, relating to the conduct and play of games of chance be approved and recommended to the Legislative Council. Senators Stenehjem, Nelson, Traynor, and Watne and Representatives Axtman, DeKrey, Delmore, Gunter, Jensen, Kelsh, Kretschmar, Maragos, Meyer, Nottestad, Stenehjem, and Sveen voted "aye." Senator Redlin and Representative Sabby voted "nay."

Multistate Lottery

At the request of Chairman Stenehjem, committee counsel presented a concurrent resolution that would

amend the Constitution of North Dakota to require the Legislative Assembly to provide by law for participation by the state in the multistate Powerball lottery. She said the proposed constitutional amendment, if approved by the Legislative Assembly, would be submitted to the voters in the general election in 2000.

Committee counsel also presented a memorandum entitled *Statewide Ballot Measures Relating to the Constitutional Prohibition Against Lotteries*. She said the memorandum contains information on the lottery-related ballot measures that appeared on the ballot between 1894 and 1996.

At the request of Chairman Stenehjem, Mr. Keller presented testimony regarding the concurrent resolution. Mr. Keller distributed proposed amendments to the concurrent resolution, a copy of which is on file in the Legislative Council office. He said the reference to the game "Powerball" in the constitution is unnecessary and too permanent. He said it is possible that the name of the "Powerball" lottery may change in the future. He also said a reference to a state lottery commission in the constitution is unnecessary because the Legislative Assembly needs the flexibility to determine the proper agency to operate a lottery and may want to change that agency from time to time. He said there should not be a requirement in the constitution that places the net proceeds from the lottery in the general fund. He said the Legislative Assembly should have the flexibility to determine the needs of the state.

Chairman Stenehjem said unless it was the committee's intention to mandate a lottery, "shall" on line 22 of the concurrent resolution should be changed to "may."

At the request of Chairman Stenehjem, Mr. Kelsch provided testimony on the concurrent resolution. He said there is a concern that a lottery would decrease interest in charitable gaming. Unless charitable gaming is involved with the lottery, he said, the charitable gaming industry would be opposed to a lottery.

In response to a question from Senator Redlin, Representative Maragos said the amendments would allow the Legislative Assembly to determine how the lottery proceeds would be used.

It was moved by Representative Maragos, seconded by Senator Traynor, and carried on a voice vote that the concurrent resolution be amended to reflect the changes offered by Mr. Keller and to change "shall" to "may" on line 22.

It was moved by Representative Maragos, seconded by Representative Stenehjem, and carried on a roll call vote that the concurrent resolution, as amended, relating to the state's participation in a multistate lottery be approved and recommended to the Legislative Council. Senators Stenehjem and Traynor and Representatives DeKrey, Delmore, Gunter, Jensen, Kelsh, Kretschmar, Maragos, Meyer, Nottestad, and

Stenehjem voted "aye." Senators Nelson and Redlin and Representatives Axtman, Sabby, and Sveen voted "nay."

CLERK OF COURT STUDY Bill Draft on Filing Fees

At the request of Chairman Stenehjem, committee counsel distributed a copy of the court fee schedule for the clerk of court manual. A copy of the schedule is on file in the Legislative Council office. He said the fee changes proposed in the bill draft only affect the fees for the filings listed on page 3, lines 15 through 18. He said the bill draft does not affect the filing fees for divorces.

In response to a question from Representative Kretschmar, committee counsel said the increased or new fees proposed in the bill draft would be retained by the county.

In response to a question from Representative Meyer, Senator Stenehjem said filing fees may be waived for indigence.

It was moved by Senator Watne, seconded by Senator Traynor, and carried on a roll call vote that the bill draft relating to filing fees be approved and recommended to the Legislative Council. Senators Stenehjem, Nelson, Redlin, Traynor, and Watne and Representatives Axtman, DeKrey, Delmore, Gunter, Hawken, Jensen, Kelsh, Kretschmar, Maragos, Sabby, Stenehjem, and Sveen voted "aye." Representative Meyer voted "nay."

Clerks of Court

Chairman Stenehjem called on Mr. Wade Enget, State's Attorney, Mountrail County, for comments regarding the Clerk of Court Consensus Process. Mr. Enget said the consensus process group has had three meetings. He said the group has addressed the clerk of court concerns of the judiciary, abstracters, landmen, attorneys, and clerks of court. He said the group recognizes that it is important for the courts to be run efficiently, but that any change to the current system must be done in an orderly fashion. He said the group has developed a plan that would give options to local government.

Mr. Enget distributed a bill draft that has been developed by the Clerk of Court Consensus Process. He said the bill draft provides that counties in which the Supreme Court determines that at least one full-time employee is necessary to provide adequate clerk of court services have three options. He said approximately 30 counties would meet this criteria. He said those 30 counties would have the option to fund the services themselves, enter into a contract with the state for services, or have the clerk of court and staff become state employees. He said the bill draft provides those counties in which the court determines that less than one full-time employee is necessary to provide adequate clerk of court services have two options. He said the 23 counties that meet this

criteria may either enter into a contract with the state or fund the services themselves. These 23 counties, he said, do not have the state employment option. The funding available under the contract would be based upon county compensation levels. He said the bill draft provides that if a county fails to deliver adequate services on its own, the Supreme Court will provide clerk of court services in the county in any manner it considers appropriate. The bill draft, he said, contains an implementation schedule that requires full implementation of the plan by July 1, 2003. A copy of the bill draft is on file in the Legislative Council office.

In response to a question from Senator Stenehjem, Mr. Fred Strege, Attorney, Wahpeton, and member of the Clerk of Court Consensus Process, said the development of "trial centers" is a concern of small counties and rural areas. He said many competing interests are involved in the clerks of court issues. He said a fiscal analysis has not been done on this plan.

In response to a question from Senator Stenehjem, Mr. Enget said a study resolution may be necessary to address issues such as the use of county facilities and how to fund technology updates.

In response to a question from Senator Watne, Mr. Enget said the Supreme Court would have to adopt rules for clerk of court services standards.

In response to a question from Representative Sveen, Mr. Enget said the Clerks of Court Association has not taken a position on the proposals in the bill draft.

In response to a question from Representative Axtman, Mr. Enget said under the plan all nonjudicial services would be the responsibility of the county. He said the state would only reimburse the county for judicial court services.

In response to a question from Senator Watne, Mr. Enget said the Supreme Court is considering this proposal as it develops its budget.

Chairman Stenehjem said the committee was very appreciative of the hard work and the many hours the members of the consensus process group have expended as they work toward a solution to the clerks of court issues.

At the request of Chairman Stenehjem, committee counsel distributed a letter and resolution from Mr. Earle R. Myers, Jr., Richland County State's Attorney, regarding clerks of court, a copy of which is on file in the Legislative Council office.

UNIFORM LAWS

Uniform Management of Public Employee Retirement Systems Act

At the request of Chairman Stenehjem, committee counsel distributed an actuarial review and technical comments by The Segal Company and Watson Wyatt on the Uniform Management of Public Employee Retirement Systems Act (UMPERSA). A copy of the

comments is on file in the Legislative Council office. She said the comments were prepared for the Employee Benefits Programs Committee, which has not yet made a recommendation on the uniform act.

Senator Nelson said the changes proposed by UMPERSA are unnecessary and that the current statutes regarding public employee retirement systems are working well.

Chairman Stenehjerm said the committee would make no recommendation on UMPERSA.

Uniform Guardianship and Protective Proceedings Act

At the request of Chairman Stenehjerm, committee counsel distributed a copy of a letter and testimony from Mr. Melvin L. Webster, Attorney, Bismarck, in opposition to the Uniform Guardianship and Protective Proceedings Act. A copy of Mr. Webster's letter and testimony is on file in the Legislative Council office.

Chairman Stenehjerm said the committee would make no recommendation on the Uniform Guardianship and Protective Proceedings Act.

TECHNICAL CORRECTIONS BILL

At the request of Chairman Stenehjerm, committee counsel presented a proposed bill draft relating to technical corrections to the North Dakota Century Code. She said the bill draft makes technical corrections, including improper, inaccurate, redundant, missing, or obsolete references.

It was moved by Senator Watne, seconded by Representative Delmore, and carried on a roll call vote that the technical corrections bill draft be approved and recommended to the Legislative Council. Senators Stenehjerm, Nelson, Redlin, Traynor, and Watne and Representatives Axtman, DeKrey, Delmore, Gunter, Hawken, Jensen, Kelsh, Kretschmar, Maragos, Meyer, Sabby, Stenehjerm, and Sveen voted "aye." No negative votes were cast.

DISCRIMINATION IN NORTH DAKOTA STUDY

Housing Discrimination Bill Draft

At the request of Chairman Stenehjerm, committee counsel presented a bill draft relating to discriminatory housing practices. She said the bill draft, which was modeled after Texas law, would repeal the current housing discrimination statutes and create new housing discrimination laws. She said the bill draft designates the Labor Department as the agency responsible for receiving and investigating housing discrimination claims. She said the bill draft includes the procedures for filing a housing discrimination claim and the remedies available to the person when a finding of discrimination is made.

In response to a question from Representative Delmore, committee counsel said the bill draft

authorizes the Labor Department to seek federal grants to fund the investigation of complaints. She said the bill draft requires the department to work with other private and public agencies that operate programs to prevent or eliminate discriminatory housing practices.

In response to a question from Senator Stenehjerm, committee counsel said the bill draft would have to be submitted to the federal Department of Housing and Urban Development to determine if the proposed statutes would meet the federal standards to receive funding.

In response to a question from Representative Axtman, committee counsel said the bill draft only changes state law as it pertains to housing discrimination and does not change other discrimination laws, such as employment.

In response to a question from Senator Traynor, Senator Stenehjerm said under this bill draft an aggrieved person would still have the option to have a complaint heard in federal court.

At the request of Chairman Stenehjerm, committee counsel distributed a copy of written testimony submitted by Ms. Amy Nelson, Executive Director, North Dakota Fair Housing Council, regarding fair housing advertising. A copy of Ms. Nelson's testimony is on file in the Legislative Council office.

Chairman Stenehjerm called on Mr. Mark Bachmeier, Interim Commissioner, Labor Department, for comments concerning the bill draft. Mr. Bachmeier said the Labor Department has expertise in the area of discrimination complaints because of its contract with the Equal Employment Opportunity Commission for the handling of employment discrimination complaints. He said assumption of housing discrimination complaints by the department may have an impact on the general fund. He said the federal funding may not be sufficient to cover training, studies, and equipment.

Senator Stenehjerm said the Office of Intergovernmental Assistance may be another agency that could handle housing discrimination claims. Mr. Bachmeier said the Labor Department would work with whichever agency is designated to handle the complaints.

It was moved by Representative Kretschmar, seconded by Representative Maragos, and carried on a voice vote that the bill draft relating to housing discrimination be amended to designate either the Labor Department or the Office of Intergovernmental Assistance as the state agency responsible for handling housing discrimination complaints.

It was moved by Senator Redlin, seconded by Representative Nottestad, and carried on a roll call vote that the bill draft relating to housing discrimination, as amended, be approved and recommended to the Legislative Council. Senators Stenehjerm, Nelson, Redlin, and Watne and Representatives Delmore, Gunter, Hawken, Jensen,

Kelsh, Kretschmar, Maragos, Meyer, Nottestad, Sabby, Stenehjem, and Sveen voted "aye." Senator Traynor and Representatives Axtman and DeKrey voted "nay."

CONSTITUTIONAL AND STATUTORY REVISION

Contingent Fee Arrangements Bill Drafts

At the request of Chairman Stenehjem, committee counsel presented two bill drafts regarding contingent fee arrangements. He said one bill draft provides that the Attorney General may not appoint a special assistant attorney general in a civil case in which the amount in controversy exceeds \$150,000 and the special assistant attorney general is to be compensated by a contingent fee arrangement unless the arrangement is approved by the Legislative Council. He said the other bill draft contains the same provisions; however, it would require the approval of the Emergency Commission rather than the Legislative Council. He said there is a constitutional provision that requires all legislative committee meetings to be open to the public. He said this open meetings provision would likely apply to the Legislative Council.

In response to a question from Senator Nelson, Senator Stenehjem said the purpose of the bill draft is to have legislative oversight when the Attorney General enters into contingent fee arrangements. He said contingent fee arrangements are an appropriation of state funds because a contingent fee arrangement gives the attorney one-third of the judgment.

In response to a question from Representative Meyer, Senator Stenehjem said although he would prefer that the Legislative Council would be the body designated for approving contingent fee arrangements, the constitutional provision regarding open meetings may be a problem. He said the parties to the dispute would not want their legal strategy made public.

Chairman Stenehjem called on Ms. Rosellen Sand, General Counsel, Attorney General's office, for comments concerning the bill drafts. Ms. Sand said the bill drafts raise the issue as to whether the approval of the contingent fee arrangements is an executive or legislative function. She said the Supreme Court, in *State v. Hagerty*, said the decision to enter into the arrangements is a core function of the Attorney General. She said the Attorney General is concerned over the confidentiality issues that would arise if the Legislative Council had the authority to approve the arrangements. She said the Legislative Council meetings could not be closed to the public without a constitutional amendment.

In response to a question from Senator Watne, Ms. Sand said the Emergency Commission is composed of the Governor, Secretary of State, the chairmen of the House and Senate Appropriations Committees, and the chairman of the Legislative Council.

Senator Stenehjem said the bill draft would only prohibit contingent fee arrangements without approval of the Legislative Council or Emergency Commission. He said it would not prohibit the Attorney General from entering into litigation.

In response to a question from Senator Redlin, Ms. Sand said the Attorney General would oppose either bill draft. She said the approval requirement would not only tie the hands of the Attorney General but those of other agencies as well.

In response to a question from Senator Traynor, Ms. Sand said contingent fee arrangements are open records; however, the merits and facts of the case must be kept confidential.

In response to a question from Senator Watne, Ms. Sand said the meetings of the Emergency Commission can be closed if specifically exempted by statute. She said there is not an open meetings constitutional provision for the Emergency Commission.

It was moved by Senator Watne, seconded by Representative Kretschmar, and carried on a roll call vote that the bill draft relating to contingent fee arrangements approval by the Emergency Commission be approved and recommended to the Legislative Council. Senators Stenehjem, Traynor, and Watne and Representatives Axtman, Jensen, Kretschmar, Maragos, Nottestad, Sabby, and Stenehjem voted "aye." Senators Nelson and Redlin and Representatives DeKrey, Delmore, Gunter, Kelsh, Meyer, and Sveen voted "nay."

North Dakota Stockmen's Association Fund Bill Draft

At the request of Chairman Stenehjem, Senator Ken Solberg, Rugby, provided testimony regarding *Billey v. North Dakota Stockmen's Association*, a decision in which the North Dakota Supreme Court held that certain types of fees that were collected and retained by the Stockmen's Association were "public moneys" and were required by the Constitution of North Dakota to be deposited with the State Treasurer and be paid out only pursuant to legislative appropriation. He said there are a number of other current statutes in which only the "net proceeds" of a gross amount collected by a state agency are deposited with the State Treasurer, such as North Dakota Century Code Sections 11-17-04 and 11-17-05 which authorize clerks of court to collect statutory fees and pay only portions of the moneys collected to the State Treasurer for deposit in the general fund.

Senator Solberg also presented a bill draft that he said would remedy the issues raised in the case. He said the bill draft provides that fees collected for certain activities must be remitted to the State Treasurer for deposit in the North Dakota Stockmen's Association fund. He said the bill draft provides that the moneys in the fund are to be appropriated on a continuing basis to the North Dakota Stockmen's

Association. He said the Office of Management and Budget and the State Treasurer have reviewed the bill draft.

In response to a question from Senator Watne, Senator Solberg said estray cattle are those cattle sold at auction for which proper ownership cannot be determined. He said the value of estray cattle is between \$60,000 and \$100,000 per year.

Senator Stenehjem said the Supreme Court, in the *Billey* decision, affirmed the district court decision and that the order is stayed until the Legislative Assembly has had an opportunity to amend the statutes to conform with the constitution. He said the Legislative Assembly has until the end of the 1999 Legislative Assembly to comply with the decision.

At the request of Chairman Stenehjem, Mr. Wade Moser, North Dakota Stockmen's Association, provided testimony regarding the bill draft. He said the *Billey* decision and the *State v. Hagerty* decision regarding contingent fee arrangements were made within four days of each other but were contradictory. He said a bill is needed to comply with the *Billey* decision. He said the repealed section in the bill draft would result in less paperwork for the State Treasurer.

In response to a question from Representative Maragos, Mr. Moser said a high percentage of the owners of estray cattle are located.

In response to a question from Representative Kretschmar, Mr. Moser said the fees for brand inspection, which are 60 cents per head, are set by the Board of Animal Health.

In response to a question from Representative Meyer, Mr. Moser said the brand inspection fees in other states vary from \$1 to \$3 per head.

It was moved by Representative Meyer, seconded by Representative Nottestad, and carried on a roll call vote that Senator Solberg's bill draft regarding the Stockmen's Association fund be adopted as a committee bill and that the bill draft be approved and recommended to the Legislative Council. Senators Stenehjem, Nelson, Redlin, Traynor, and Watne and Representatives Axtman, DeKrey, Delmore, Gunter, Jensen, Kelsh, Kretschmar, Maragos, Meyer, Sabby, Stenehjem, and Sveen voted "aye." No negative votes were cast.

Safe Deposit Box Entry Bill Draft

At the request of Chairman Stenehjem, committee counsel presented a bill draft regarding entry of a safe deposit box. He said the bill draft provides for an affidavit procedure whereby an interested person may have access to a safe deposit box after the death of the owner to determine if the box contains a will or other documents that state the owner's wishes regarding a funeral or burial arrangements.

In response to a question from Representative Meyer, committee counsel said the bill draft provides that only the will may be removed from the box, not

the other contents. He said an inventory list is made of the box's contents.

In response to a question from Representative Nottestad, Senator Traynor said the 1997 Legislative Assembly repealed a law relating to the acquisition of the contents of a safe deposit box after the death of an owner. He said under the old law a person could receive a petition from the clerk of court and have a bank officer aid in the inventory of the safe deposit box. He said after the repeal of the old law, there is a lack of uniformity in the procedure to gain entrance to a safe deposit box. He said the bill draft is modeled after Minnesota law, which has been working well.

In response to a question from Senator Watne, committee counsel said the "interested persons" listed in the bill draft are not listed in any order of priority.

It was moved by Representative Axtman, seconded by Representative Nottestad, and carried on a roll call vote that the bill draft relating to the entry of a safe deposit box be approved and recommended to the Legislative Council. Senators Stenehjem, Nelson, Redlin, Traynor, and Watne and Representatives Axtman, DeKrey, Delmore, Gunter, Jensen, Kelsh, Kretschmar, Maragos, Meyer, Sabby, Stenehjem, and Sveen voted "aye." No negative votes were cast.

PUBLIC HEARINGS ON BALLOT MEASURES

Chairman Stenehjem said the chairman of the Legislative Council assigned the Judiciary Committee the duty of holding public hearings on the constitutional measures to be on the ballot in the primary and general elections. He said it is not the purpose of the Judiciary Committee to take a public stand on the measures. He said the purpose of holding the hearings is to promote public discussion and debate and to create a public history.

Measure No. 1

Chairman Stenehjem called on Senator Solberg for testimony regarding measure No. 1. Senator Solberg said the original drafters of the constitution designated various cities to house the various institutions of higher education. He said, however, that was over 100 years ago and it is a different time now. He said with the advancements in technology, the mode of higher education has changed. He said the number of full-time students in higher education institutions in the state is declining, but there is continually higher funding for higher education. He said there will continue to be fewer college students because there are fewer high school graduates. He said measure No. 1 is about allowing for flexibility, not about closing colleges.

In response to a question from Representative Delmore, Senator Solberg said if measure No. 1 passes, it would allow the State Board of Higher Education to move in a different direction and to move

funding to where it is best spent. He said the only reason a college should be open is for excellence in education.

In response to a question from Representative Jensen, Senator Solberg said he is not an advocate of recruiting out-of-state students. He said North Dakota students get a high-quality education at tuition rates that are considerably less than most other states.

At the request of Chairman Stenehjem, committee counsel distributed a letter from Mr. Douglas Marsden, Mayor, Bottineau, in opposition to measure No. 1. A copy of the letter is on file in the Legislative Council office.

Chairman Stenehjem called on Dr. Sharon L. Etemad, UND-Lake Region, Devils Lake, for testimony regarding measure No. 1. Dr. Etemad said she is opposed to measure No. 1. She said the two-year colleges in the state serve a unique purpose, especially in the area of work force and economic development. She said UND-Lake Region is central to the Devils Lake area and it serves a unique purpose that cannot be served by larger schools. She said UND-Lake Region brings more to the area than higher education, such as cultural events and community education. She said the financial savings involved in closing a school would be minimal. She said she is not against the need for flexibility regarding institutions of higher education but what may ultimately result. She said small campuses can form partnerships with businesses to share facilities and both would benefit. She said it would be more beneficial to focus on the purpose of the two-year schools than to close them.

Chairman Stenehjem called on Mr. David Geiszler, Bottineau, for testimony regarding measure No. 1. Mr. Geiszler said he is opposed to measure No. 1. He said all citizens of the state need access to higher education, not only those citizens who live in the larger urban areas. He said the state already has the flexibility it needs to handle the changing needs of higher education. For example, he said, Mayville State University and Valley City State University share administrators. He said many steps have been taken between schools to save money. He said there are three colleges in the state which are not protected by the constitution. He said he is opposed to measure No. 1 because no plan has been offered as to what will happen if the measure passes.

Chairman Stenehjem called on Representative Merle Boucher, Rolette, for testimony regarding measure No. 1. Representative Boucher said he is opposed to measure No. 1. He said the opportunity to attend a two-year college helped prepare him for a four-year school. He said a two-year college is less intimidating for a high school student from a small town than enrolling in a large four-year college. He said the founders of the Constitution of North Dakota had a strong commitment to higher education and the

continued support of education. He said there are many theories that North Dakota is in a state of demise. He said people in leadership positions have bought into that theory. He said the leaders in the state should be developing plans for North Dakota to look for growth and to have a vision. He said the institutions of North Dakota belong to the people. He said the state needs to evaluate the structure of kindergarten through grade 12 and higher education, not dismantle it.

In response to a question from Representative Sveen, Representative Boucher said a "yes" or "no" vote will not resolve the higher education issues but will create more controversy.

Chairman Stenehjem called on Representative Carol A. Niemeier, Buxton, for testimony regarding measure No. 1. She said there are many instances of persons who have been able to attend college because the colleges were accessible. She said many people do not have the option to relocate or commute to the larger colleges. She said higher education must meet the education needs in all areas of the state. She said selling a campus is not economic development. The University System, she said, has the flexibility it needs and a constitutional change is not necessary to make the necessary changes to higher education. She said Mayville State University continues to have increases in enrollment. She said 35 percent of out-of-state and Canadian students stay in the state after graduating from state colleges. She said there should be a respect of the vision of the forefathers who drafted the constitution. The vision, she said, has endured the test of time.

Chairman Stenehjem called on Mr. Ken Eastman, Mayville, for testimony regarding measure No. 1. Mr. Eastman read a letter in opposition to measure No. 1 from Mr. John E. Freije, Mayor, Mayville. A copy of Mr. Freije's letter is on file in the Legislative Council office.

Chairman Stenehjem called on Representative Ole Aarsvold, Blanchard, for testimony regarding measure No. 1. He said the proponents of measure No. 1 claim that a "yes" vote on measure No. 1 will not change the mission of or close any colleges; however, recent press stories indicate that this is the intent. He said the state's campuses should not be thought of as a commodity. He said the purpose of a constitution is to protect the rights of the people and a "yes" vote on measure No. 1 would give away the power reserved to the people to protect the colleges. He said to change or modify the purposes of campuses is a separate issue.

Chairman Stenehjem called on Senator David O'Connell, Lansford, for testimony in opposition to measure No. 1. He said the amount of money spent to defeat and provide information on this measure would have been enough to educate every student at MSU-Bottineau this year. He said morale would be much higher this year if students did not have to fear

that they would not have a school in the future. He said this measure is just one more attempt to chip away at the constitution and the people's rights it protects.

Chairman Stenehjerm called on Representative Maragos for testimony in opposition to the measure. He said measure No. 1 is one of the most bogus issues put before the voters of North Dakota in a long time. He said the proponents are asking the people of the state to vote on the issue without proper information. He said when it was proposed to remove both the names and missions of the institutions from the constitution, the intent was closure, not flexibility. He said he does not support the measure because closing an institution would simply move the economic benefits from one community to another community. He said a "yes" vote means the citizens of the state are backing away from their responsibility to higher education. He said higher education is working in the state and he would encourage a "no" vote on the measure.

Chairman Stenehjerm called on Mr. Swain Benson, Bottineau, for testimony in opposition to measure No. 1. Mr. Benson said the forefathers believed it was necessary to name the locations of the institutions of higher education and that thinking has withstood the test of time. He said the issue should not be sugar-coated by using terms like "flexibility" and "less restrictive." He said the partnerships formed between higher education institutions over the past several years are indicative that institutions already have flexibility. He said this measure is about closure. He said change does not require closure and this measure is an assault on the rural way of life. He said closure of institutions would create an elitist educational system.

Chairman Stenehjerm called on Representative Sveen for testimony in opposition to measure No. 1. He said there must be optimism about the future of the state. He said the solution to the state's problems is not to cut. He said the state cannot afford to "not afford" education.

In response to a question from Representative Meyer, Representative Sveen said out-of-state students are a form of economic development and recruitment of out-of-state students should be encouraged.

Measure No. 2

Chairman Stenehjerm called on Mr. Arlin Thompson, Sheriff, McLean County, for testimony regarding measure No. 2. Mr. Thompson said the office of sheriff should continue to be an elected position and for that reason he supports measure No. 2. He said he has served as sheriff in McLean County since 1962. He said 32 sheriffs in the state have served 19 or more years. He said over the years he has had many disagreements with county commissioners and probably would have been fired if he had been appointed by them. He said as an elected official, he

has been accountable to all the citizens of the county, not just the three or five county commissioners. He said if the sheriff is accountable to the county commissioners, more politics is involved. He said an elected sheriff is more accountable and works harder than an appointed one.

In response to a question from Senator Stenehjerm, Mr. Thompson said he has had disagreements with county commissioners over issues such as salaries, budgets, and equipment.

In response to a question from Representative Kretschmar, Mr. Thompson said he is not aware of any desire in the county to make the sheriff an appointed position. He said the county commissioners want the position to remain an elected one.

In response to a question from Senator Nelson, Mr. Thompson said the measure does not prohibit counties from consolidating to elect one sheriff.

Chairman Stenehjerm thanked Mr. Thompson for his many years of public service.

Chairman Stenehjerm called on Mr. Vern Erck, Ward County Sheriff, for testimony in support of measure No. 2. Mr. Erck said as an elected sheriff for the past eight years, he believes the best system is for sheriffs to be elected. He said an elected sheriff is more responsive to the needs of the people. He said a sheriff works as a buffer between the people and the county commissioners.

In response to a question from Senator Stenehjerm, Mr. Dick Peck, Sheriffs Association and Peace Officers Association, said a similar measure that would have required the election of both sheriffs and state's attorneys was defeated by the Legislative Assembly. He said the association decided to take the issue to the voters rather than attempt to have legislation passed regarding the issue of sheriff elections.

In response to a question from Representative Jensen, Mr. Peck said appointed sheriffs would not be more professional or better trained than elected sheriffs because there are certain standards and training that must be maintained by sheriffs.

In response to a question from Representative DeKrey, Mr. Peck said a newly elected sheriff without law enforcement training has one year to become trained and attend the Law Enforcement Academy.

In response to a question from Representative Axtman, Mr. Thompson said if a sheriff is reelected after a period of five or more years since he or she last held office, the sheriff must be retrained. He said it is important for a sheriff to maintain his or her training because a county could be liable for the acts of a nontrained sheriff. He said there is not a cap on sheriff's salaries, but there is a minimum.

In response to a question from Representative Axtman, Mr. Peck said time and service are not required to be used to determine a sheriff's salary.

In response to a question from Representative Kretschmar, Mr. Peck said a survey conducted by the

Association of Counties indicates that 91.9 percent of responders believe the sheriff's office should be elected; 7 percent believed it should not be elected; and 1 percent were undecided.

Chairman Stenehjem called on Mr. Mike Heim, Bismarck, for testimony regarding measure No. 2. Mr. Heim said while he recognizes the hard work of sheriffs and is supportive of law enforcement, he is opposed to the measure. He said the measure sets apart sheriffs from other elected officials. He said this measure will work to unravel the tool chest bill. He said measure No. 2 allows larger counties to vote on a measure that will take away the right of the smaller counties. He said he is not aware of any counties that were considering making the sheriff an appointed position even though counties have had the option since 1993. He said there are certain due process steps the county commissioners would have to take before firing a sheriff. He said under measure No. 2 a deputy in one county could not run for sheriff in another county without moving to that county before the election. He said under this measure the residency requirement would apply to all elected county officials, not just the sheriff.

In response to a question from Senator Watne, Mr. Heim said that because the office of sheriff is investigative rather than administrative should not be a factor in determining whether the office is elected or appointed.

In response to a question from Senator Stenehjem, Mr. Heim said the residency language in the measure could hurt the counties.

OTHER BUSINESS

It was moved by Representative Nottestad, seconded by Senator Nelson, and carried on a voice vote that the chairman and the staff of the Legislative Council be requested to prepare the final report and the bill and resolution drafts recommended by the committee and to present the report and recommended bill and resolution drafts to the Legislative Council.

It was moved by Senator Watne, seconded by Representative Sabby, and carried on a voice vote that the committee adjourn sine die, subject to the call of the chairman if a brief meeting is necessary to address a recommendation of the Clerk of Court Consensus Process.

Chairman Stenehjem adjourned the meeting at 2:45 p.m.

Vonette J. Richter
Committee Counsel

Timothy J. Dawson
Committee Counsel

ATTACH:1