

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIAL PROCESS COMMITTEE

Monday, March 27, 2006

Mandan Room, Days Inn - Grand Dakota Lodge
Dickinson, North Dakota

Senator Stanley W. Lyson, Chairman, called the meeting to order at 12:00 noon (MST).

Members present: Senators Stanley W. Lyson, John T. Traynor; Representatives Ron Carlisle, Dawn Marie Charging, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Shirley Meyer

Members absent: Senators Carolyn Nelson, Constance Triplett; Representatives Duane DeKrey, Lois Delmore, Kathy Hawken, Dennis Johnson, Joyce Kingsbury

Others present: See attached appendix

It was moved by Representative Carlisle, seconded by Representative Klemin, and carried on a voice vote that the minutes of the February 27, 2006, meeting be approved.

EMINENT DOMAIN STUDY

Chairman Lyson called on Mr. Jerry Hjelmstad, North Dakota League of Cities, Bismarck, regarding the eminent domain study. Mr. Hjelmstad said there is a fear that the eminent domain court rulings authorize the taking of one business to give it to another business. He said the 1996 North Dakota eminent domain case *Leever's Supermarket v. City of Jamestown* required that the taking must be for the benefit of the public and not for the benefit of a private business. He said there are a number of issues with the proposed initiated measure, specifically the second sentence of the measure. He said there is a concern about the ability of a government to resell excess property that was taken by eminent domain or property that is no longer needed for public use. He said there is also a concern about the effect of the measure on the ability to take property under the state's urban renewal laws.

In response to a question from Representative Kretschmar, Mr. Hjelmstad said the *Kelo v. New London* decision emphasized that the entity was required to have a plan before the taking could occur. He said North Dakota law, through the *Leever's* decision, already contained that requirement. He said the *Kelo* decision was not a drastic change from North Dakota law.

In response to a question from Senator Lyson, Mr. Hjelmstad said he agrees with the analysis of the proposed measure that property taken by eminent domain cannot be resold. He said the supporters of the measure argue that the government should not be taking more property than it needs for a particular

project. However, he said, property owners may not want to be left with a small, unusable portion of land.

In response to a question from Representative Koppelman, Mr. Hjelmstad said there are concerns about the effect of the measure on public works projects. He said the measure does not use the word "primary" when referring to whether the purpose is for economic development or not. He said the North Dakota League of Cities adopted a resolution at its annual meeting which recommended that the eminent domain issue be addressed legislatively.

In response to a question from Representative Klemin, Mr. Hjelmstad said he was not sure of the effect the measure would have on transactions, such as long-term leases. He said it is likely that the measure would apply not only to land acquired by eminent domain in the future but in the past as well.

In response to a question from Senator Traynor, Mr. Hjelmstad said the sponsoring committee is still gathering signatures on the petitions and is hoping to get the measure on the November ballot.

In response to a question from Representative Charging, Mr. Hjelmstad said by using the process of amending the constitution to address the eminent domain issues raised in *Kelo*, it will be more difficult to deal with issues that will arise after the measure passes.

In response to a question from Representative Koppelman, Mr. Hjelmstad said if the constitutional amendment was placed on the ballot via the legislative process, there would be more opportunities to fine tune the language before the measure appeared on the ballot.

Chairman Lyson called on Mr. Greg Sund, City Administrator, Dickinson, for testimony regarding the eminent domain study. Mr. Sund said eminent domain is a means of last resort for finding land for development. He said it is more likely in North Dakota that a county would take land because of the failure to pay property taxes than by using eminent domain proceedings. He said the government does not like using eminent domain. He said the process is more expensive and time-consuming than negotiation. He said it is a tool that is rarely used.

In response to a question from Representative Meyer, Mr. Sund said other states are not as diligent as North Dakota is about collecting delinquent taxes.

In response to a question from Representative Kretschmar, Mr. Sund said the Dickinson City Commission has had one request from a developer to

take land by eminent domain. He said the Dickinson City Commission refused the request.

In response to a question from Representative Klemin, Mr. Sund said the urban renewal laws could still be used if the measure passes but the land could not be acquired by using eminent domain.

Chairman Lyson called on Ms. Mary Massad, Southwest Water Authority, Dickinson, for testimony regarding the eminent domain study. Ms. Massad said the eminent domain process is important for securing rural easements. She said eminent domain can be used as a threat. She said there can be thousands of landowners involved in the laying of water pipeline. She said there are usually one or two landowners per project that refuse to grant an easement and eminent domain must be used. She said eminent domain is a valuable tool.

In response to a question from Representative Meyer, Ms. Massad said the passage of the measure could affect the authority's ability to obtain easements. She said the eminent domain process usually results in more money for the landowner than the negotiation process.

COMMITTEE DISCUSSION

Representative Koppelman said he would like a bill draft to address the eminent domain issues in the event the initiated measure does not get on the ballot or does not pass.

Representative Klemin said the bill draft should address the standard of review for courts in eminent domain cases. He said the court should have de novo review to allow the court to look at the merits of the case in eminent domain cases.

Representative Koppelman said it is logical for the Legislative Assembly to review the eminent domain laws of the state and to address any problem raised by the *Kelo* decision.

Representative Kretschmar said if the initiated measure passes, the Legislative Assembly may want to define what is meant by the public benefits of economic development.

Representative Koppelman said the hearings that have been conducted by the committee are helping to create a legislative history.

In response to a question from Representative Charging, Chairman Lyson said the role of the committee is to conduct hearings and gather information. He said the committee will not be making any statements regarding concerns about the initiated measure. He said the minutes of the hearing are public record. He said the public can read the minutes and form opinions regarding the measure.

Representative Klemin said individual legislators are free to discuss with others any concerns they may have regarding the measure.

No additional business pending, Chairman Lyson adjourned the meeting at 1:30 p.m. (MST).

Vonette J. Richter
Committee Counsel

[ATTACH:1](#)