

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Monday, May 8, 2006
Room 803, Prairie Knights Casino and Resort
Fort Yates, North Dakota

Senator Bob Stenehjem, Chairman, called the meeting to order at 9:15 a.m.

Members present: Senators Bob Stenehjem, Randel Christmann, Stanley W. Lyson, David O'Connell; Representatives Rick Berg, Duane DeKrey, Kenton Onstad

Native American Tribal Citizens' Task Force members present: Ken W. Davis, Chairman, Turtle Mountain Band of Chippewa Indians; Tex G. Hall, Chairman, Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation; Ron His-Horse-Is-Thunder, Chairman, Standing Rock Sioux Tribe; Cheryl Kulas, Executive Director, Indian Affairs Commission

Native American Tribal Citizens' Task Force members absent: Gerald Flute, Chairman, Sisseton-Wahpeton Oyate; Myra Pearson, Chairman, Spirit Lake Nation

Others present: See Appendix A

Senator Aaron Krauter, member of the Legislative Council, was also in attendance.

It was moved by Representative DeKrey, seconded by Senator Lyson, and carried on a voice vote that the minutes of the February 21, 2006, meeting be approved as distributed.

DELIVERY OF SERVICES AND CASE MANAGEMENT SERVICES IN INDIAN COUNTRY

Chairman Stenehjem recognized Ms. Carol K. Olson, Executive Director, Department of Human Services. Ms. Olson distributed a matrix describing field services and program and policy management services provided by the department. A copy of the matrix is attached as Appendix B. She emphasized the department makes available all services and assistance without regard to race, color, religion, national origin, age, sex, disability, or status with respect to marriage or public assistance.

Chairman Stenehjem recognized Ms. Maggie Anderson, Director, Medical Services, Department of Human Services. Ms. Anderson described case management services provided by the Department of Human Services in Indian country. A copy of her written comments is attached as Appendix C. She said the Medicaid state plan limits case management services to be delivered by public agencies that have individual case managers who meet specific qualifications. She said an example of a specific qualification is a bachelor's degree in social work.

Ms. Anderson said administrative rules allow case management services to be provided by county agencies and human service centers and also allow case management services to be provided by a county agency or through a contract with a county agency.

In response to a question from Mr. Davis, Ms. Anderson said 2005 House Bill No. 1191, which relates to a moratorium on long-term care bed capacity, provides that nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, 2005, and July 31, 2007. Thus, she said, if the Turtle Mountain Band of Chippewa Indians plans to add beds at a long-term care facility owned and operated by the tribe, a change in state law is required.

Senator Stenehjem requested that representatives of the Department of Human Services be invited to discuss the applicability of the long-term care bed moratorium to the Turtle Mountain Band of Chippewa Indians at a future meeting.

In response to a question from Mr. Davis, Mr. John Hougen, Department of Human Services, said an audit of the Department of Human Services has challenged the method the department uses to define Indian country. Under the department's temporary assistance for needy families (TANF) program, he said, the department had defined Indian country as a county or counties that contain an Indian reservation or a portion of an Indian reservation. He said the federal auditors define Indian country as the reservation itself and thus Indians living outside the reservation may not be included in the definition.

In response to a question from Senator Krauter, Mr. James Fleming, Executive Director, State Child Support Enforcement Program, Department of Human Services, said dialogue is ongoing between the department and tribal courts on methods to improve child support enforcement. He said child support enforcement efforts are improving, several tribes have received federal approval to operate their own child support enforcement programs, and child support enforcement attorneys are being licensed in tribal court to practice before those courts.

TAXATION IN INDIAN COUNTRY

Senator Stenehjem recognized Mr. Bob Christman, Deputy Tax Commissioner, Tax Department, who discussed the department's education program for

motor vehicle tax refunds for individual Native Americans. A copy of the written materials used by Mr. Christman in his presentation is attached as Appendix D.

In response to Mr. Christman's comments, Mr. Hall said the requirement that individuals submit an actual receipt in order to receive a motor vehicle fuel tax refund is still a problem.

In response to a question from Mr. Hall, Mr. Christman said the refunds would be available from January 1, 2005.

In response to a question from Senator Stenehjem, Mr. Hall said one alternative would be to allow an individual to submit a work schedule with information on the individual's place of residence. Thus, he said, if it is clear that an individual has to drive 30 miles from his or her residence to that individual's place of work, the amount of the refund could be calculated on the distance the individual had to travel to work.

In response to Mr. Hall's comments, Mr. Davis said another alternative would be to distribute the refund amount on a per capita basis in Indian country and only require receipts in the future.

In response to Mr. Davis's comment, Mr. His-Horse-Is-Thunder said another alternative would be to provide a refund at the pump if the individual purchasing the gas displayed a tribal identification card.

In response to the previous discussion, Senator Stenehjem said the best solution may be a state-tribal agreement with each of the state's Indian tribes. He said the agreement the state has with the Standing Rock Sioux Tribe is working very well.

In response to a question from Mr. Davis, Ms. Kathleen Brady, Tax Department, said 35 individuals have applied for the Native American motor fuel tax refund, of which 46 percent has been fully approved and an additional 13 percent partially approved. She said the average refund is \$355. She said the department has requested further information on the remaining applications and expects to issue the refunds once the documentation is received.

Chairman Stenehjem recognized Mr. His-Horse-Is-Thunder. Mr. His-Horse-Is-Thunder said enrolled nonmember Indians should be treated the same as enrolled members on the reservation. He said enrolled nonmember Indians are often subject to tax even though they are residing on an Indian reservation.

In response to Mr. His-Horse-Is-Thunder's comments, Mr. Davis said Oregon exempts enrolled nonmember Indians from state taxation while residing on a reservation.

Chairman Stenehjem invited each of the tribal chairmen to submit proposed solutions to the problem of motor fuel tax refunds to the committee at its next meeting.

ECONOMIC DEVELOPMENT INITIATIVES IN INDIAN COUNTRY

Chairman Stenehjem recognized Mr. Bob Humann, Senior Vice President of Lending, Bank of North Dakota, who discussed the tribal-state loan guaranty program. A copy of the tribal-state guaranty working group meeting minutes discussed by Mr. Humann is attached as Appendix E. He said the tribal-state guaranty working group had developed several recommendations concerning implementation of 2005 House Bill No. 1526. He said the real issue is communication between the non-Native American business and tribal- or Indian-owned business. He said these parties are not aware of the needs of the other. He said the group is recommending the new North Dakota American Indian Business Office to be operated by Ms. Christine Martin-Goldsmith focus on improving this type of communication. He said if the Department of Commerce determines that payment concerns or financing concerns are a reoccurring problem, then further work on proposed legislation should be completed.

Mr. Humann said there are a number of guaranty programs available from the Bureau of Indian Affairs, Small Business Administration, the Rural Development business and industry program, and the Bank of North Dakota's beginning entrepreneur loan program. He said there does not appear to be payment problems between holders of 8a contracts and subcontractors but there may be an issue with attracting contractors to perform work on reservations. However, he said, there are alternative methods of attracting these contractors, such as escrowed funds and letters of credit. He said the Bank of North Dakota is a financial institution that could help with the timing differences between paying out on a claim and final settlement but the Bank does not have the legal expertise to review contracts required to be in the performance/payment bond business.

TRANSPORTATION FINANCE ISSUES IN INDIAN COUNTRY

At the request of Chairman Stenehjem, committee counsel distributed a letter from Mr. David Sprynczynatyk, Director, Department of Transportation, containing responses to questions that were raised during the Tribal and State Relations Committee meeting held on Tuesday, February 21, 2006. A copy of the letter is attached as Appendix F.

Chairman Stenehjem recognized Mr. Tim Horner, Department of Transportation, who discussed transportation finance issues in Indian country.

In response to a question from Senator Christmann, Mr. Horner said a project's geographic location, whether on or off a reservation, has no bearing on if or when the project will be constructed.

In response to a question from Senator Christmann, Mr. Hall said the state has concurrent jurisdiction with the tribe on state roads that run through the state's reservations. For the Bureau of Indian Affairs roads, he said, the Bureau of Indian Affairs has jurisdiction and the state does not have jurisdiction on these roads on the reservation. He said if a traffic offense is committed by a tribal member on the reservation, the offense is heard in tribal court, and if the offense is committed by a nonmember, the state would have jurisdiction. For the Bureau of Indian Affairs roads, he said, the tribe has no jurisdiction over nonmembers and nonmembers will be turned over to state authorities for trial in state court.

At the request of Chairman Stenehjem, committee counsel distributed a booklet prepared by the National Conference of State Legislatures entitled *Criminal Jurisdiction and Law Enforcement - Areas for State-Tribal Cooperation*, a copy of which is on file in the Legislative Council office.

Chairman Stenehjem recognized Representative Onstad who requested the Legislative Council staff arrange for information to be presented on the cross-deputization of law enforcement officers between state and tribal law enforcement agencies at a future meeting.

REQUESTS OF STAFF

Mr. Hall requested the Legislative Council staff arrange for a presentation of information on the ownership of oil and gas resources under the bed of

Lake Sakakawea. He said the state has asserted ownership of these resources which is hindering a tribal leasing and drilling program.

Representative Berg requested the Legislative Council staff to arrange for the presentation of information by representatives of the State Water Commission on the water needs of the tribes and state as well as a briefing on the tribal municipal, rural, industrial water supply program.

Representative DeKrey requested the Legislative Council staff to arrange for a presentation by representatives of the Game and Fish Department concerning the implementation of 2005 Senate Bill No. 2041, which dealt with hunting on Indian land.

Mr. Hall requested the Legislative Council staff to arrange for a presentation of information by the Attorney General concerning the methamphetamine problem and how the state and tribes can work together to confront the methamphetamine epidemic in North Dakota.

Mr. Hall requested the Legislative Council staff to arrange for a presentation of information concerning the P-16 Education Task Force.

No further business appearing, Chairman Stenehjem adjourned the meeting at 3:00 p.m.

Jeffrey N. Nelson
Committee Counsel

[ATTACH:6](#)