

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

LEGISLATIVE COUNCIL

Thursday, November 29, 2007
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Al Carlson, Chairman, called the meeting to order at 1:00 p.m.

Members present: Representatives Al Carlson, Rick Berg, Merle Boucher, Jeff Delzer, Lee Kaldor, Shirley Meyer, Phillip Mueller, Chet Pollert, Bob Skarphol; Senators Dick Dever, Tim Flakoll, Joel C. Heitkamp, Ray Holmberg, Larry J. Robinson, Bob Stenehjem, Rich Wardner

Member absent: Senator David O'Connell

Others present: Jay E. Buringrud, Jim W. Smith, Roxanne Woeste, Allen H. Knudson, Karen J. Mund; Legislative Council, Bismarck

See attached [appendix](#) for additional persons present.

It was moved by Senator Robinson, seconded by Senator Holmberg, and carried on a voice vote to dispense with reading of the minutes of the June 6, 2007, meeting and to approve the minutes as distributed.

Chairman Carlson acknowledged the retirement of Mr. John D. Olsrud as director of the Legislative Council and commended him for his years of service.

Chairman Carlson said there was basically one item on the agenda, consideration and discussion of the appointment of the director of the Legislative Council. He said he had a recommendation on how he believes this position should be filled, but he wanted to provide some background. He said he believed that with all the things happening now, including the upgrade of the computer application system, it is important to proceed and name a new director from within the current Legislative Council staff. He said it is only about 12 months before the 2008 organizational session, and he said the Legislative Council staff has to be prepared. He noted that a section of 2007 House Bill No. 1001, the appropriation for the legislative branch, provides for a review of staff services and the need to study succession planning for the Legislative Council staff. He said a new director should review the question of whether the office is overstaffed in some areas and understaffed in others. He said he believes the Legislative Council staff needs an officewide employee evaluation system. He said it is a good time to review the positions on the Legislative Council staff and see if any changes are in order. He said perhaps there should be a separate legal division, fiscal division, and administrative services division. Chairman Carlson said he recommended Mr. Jim W. Smith as the next director of the Legislative Council.

Representative Kaldor said he is concerned over the process. He said he respects the right of the chairman to make a recommendation but he questioned whether there had been due diligence to seek applicants and determine criteria for the job before making a decision to fill this position. He commended the current staff for being professional and nonpartisan and said his concern is with the process being followed and the way this is being handled. He noted that every other publicly elected body is required by law to deliberate under the open meetings laws and he questioned whether that had been followed in this case. He said he has good feelings about the chairman's recommendation, but there should be a discussion of what the members expect of a director of the Legislative Council, and the consideration of changes in the office should take place before appointment of a director.

In response to a question from Representative Kaldor, the director said the statute does not provide requirements for the position of director, and there is an existing job description for the position that requires that the director meet the qualifications of counsel and then meet other qualifications. He said the law does not require that the director be an attorney. He said there are two appointive positions on the Legislative Council staff--a director and a legislative budget analyst and auditor--and there are specific statutory qualifications for the latter position.

Representative Mueller said he believes the Legislative Council has a critical role to play and he appreciates the recommendation of the chairman. However, he said, others may have different ideas regarding the role and responsibility and he said there is the need to determine what is expected of the Legislative Council staff in the future.

Representative Berg said he believes this is an opportunity to review ways to make changes. He said he believes a review of possible changes should take place in the next three to six months. Chairman Carlson said there is a need to look at how we do business.

Representative Mueller said he believes that the Legislative Council is proceeding in the wrong order. He said he believes the review should take place and then the Council should decide the qualifications of the next director.

Senator Holmberg said Legislative Council responsibility under the statute is to hire a director. He said the entire Legislative Assembly may change

the qualifications in the future, but now there are no statutory qualifications for that position. He said he supports the idea of hiring from within the current staff.

Senator Heitkamp said he had e-mailed members of his caucus when he learned the Legislative Council would be naming a new director and he said he got split results regarding the two members of the staff under consideration. He said he believes that the Legislative Council needs to provide information regarding the job description and the number of people who were given the opportunity to apply for the position. He said because the qualifications for the legislative budget analyst and auditor require that a person be a certified public accountant or have equivalent education and experience, it could be argued that the assumption is that the director be a lawyer.

Chairman Carlson said this issue has come up before and in his opinion the role of a lawyer is to advise on the law and constitutionality of legislation. He said the question is whether the role of the director is to be a manager or to be a legal advisor. He said he believes the role of the director is to run the entire staff. He said he does not believe the director needs to be an attorney because the Legislative Council has a qualified legal staff.

Senator Heitkamp said he believes the Legislative Council is subject to criticism if the process is not open to other applicants.

Senator Wardner said there are two very good members of the staff who are under consideration for this position. He said he believes there should be an interview process and after that process he would feel more comfortable making a decision.

In response to a question from Representative Boucher, the director said all of the persons who have been director of the Legislative Council have been attorneys. He said there are not good records showing all the reasons, but he would guess that the reason directors have been attorneys is that legislation is primarily about the making of laws, one important part of which is the appropriation process. He said the director is expected to know the law and legislators and others often want the director's opinion on the constitutionality of an idea. He said he believes a person who is not an attorney would be at a disadvantage in that regard. He said the legislative branch is strengthened in its relationship with the other two branches if the director is an attorney, such as when the director and the Attorney General have different opinions. The director also said if the director were not an attorney, it would be questionable if work of the members of the staff who were not attorneys would be protected under the attorney-client communication exception in the open records law. He said under the current experience in which the director is an attorney and the legislative budget analyst and auditor is a certified public accountant, the integrity of members of the fiscal staff are protected in their professional responsibility inasmuch as they report to

the certified public accountant on fiscal matters. He said if both the director and the legislative budget analyst and auditor are accountants, the attorneys on the staff are not protected by the same professional protection because they would have to report to a person who is not an attorney. He said there are two career ladders on the current staff and he believes that is one reason for stability on the staff. The members of the fiscal staff can rise to the appointed position of the legislative budget analyst and auditor, and the attorneys on the staff can rise to the appointed position of director. He said the lawyers on the staff have waited 25 years for this position to open, and if the career ladder for attorneys does not lead to becoming director, he is concerned about the negative impact on staff morale that this would have.

Chairman Carlson said he believed that Representative Boucher was really looking for information on the process used the last two times a director had been appointed. The director said the last two times the director's position has been opened, the prior directors took new jobs and gave far less notice than he had given because he is retiring rather than taking another position. He said both times the chairman at the time sent out a letter recommending the assistant director be promoted and neither time was there a nationwide search.

Representative Boucher said because the Legislative Council had two months to go through a process to find a director, he believes there was the opportunity to have applications and the members would then be showing respect for the process. He said it is incumbent on the Council to clarify that process and start with a job description and move forward from there.

In response to a question from Representative Kaldor as to whether it would be possible to appoint an interim director during which time the process could proceed with the development of a job description and an interview process, Representative Skarphol said he believes it is important to name a director soon, particularly because of the new computer applications project. He said the new director has to be responsible for that project and if it is not successful, he believes the Legislative Council will probably be looking for a new director.

Chairman Carlson said because the current job description says the director must be an attorney, he is not sure how the position could be advertised. Representative Kaldor said the Legislative Council has a responsibility to write a new job description, as the current job description is in conflict with the action the Council is taking.

Representative Berg said the question is whether there is sufficient talent in-house to do the job. He said he believes that each member has different ideas on how different people will fit this position. He said he believes it is better to make a decision and proceed.

It was moved by Representative Berg, seconded by Representative Skarphol, and carried

on a roll call vote that Mr. Jim W. Smith be appointed director of the Legislative Council.

Voting in favor of the motion were Representatives Carlson, Berg, Boucher, Delzer, Kaldor, Meyer, Mueller, Pollert, and Skarphol and Senators Dever, Flakoll, Heitkamp, Holmberg, Robinson, Stenehjem, and Wardner. There were no negative votes.

Chairman Carlson called on Mr. Smith for remarks. Mr. Smith thanked the members of the Legislative Council for the confidence placed in him and he acknowledged the stress this process had placed on Mr. Jay E. Buringrud. He said he wanted members of the Council to know that he had heard their comments regarding possible changes to be considered. He recognized the current Legislative Council staff and the quality of the work performed by that staff, and that special appreciation needs to be expressed for the support staff. He said he understands that as the only full-time staff for the Legislative Assembly there is a need to provide the services legislators need. He said it is a high priority for him to continue the high-quality, professional, nonpartisan staff so legislators can trust the work product and complete the session on time. He said he is committed to being accountable and he will try to meet all legislators' needs.

Chairman Carlson said he would like to have the Legislative Council meet in about two months and review any recommendations the new director may have. He said he hopes the transition goes smoothly, and he asked the director to call the staff together so he could introduce the new director to them.

Chairman Carlson said he has been asked by Senator Heitkamp and others to consider a study of Workforce Safety and Insurance. Senator Heitkamp said he believes the legislative branch has taken a backseat to the executive branch on Workforce Safety and Insurance issues. He said he would like the legislative branch to be on top of this situation. He said the challenge is to get the legislative branch involved and he does not believe that this issue should be ignored.

Representative Boucher said the issue of the problems at Workforce Safety and Insurance need to be attended to and resolved. He said the legislative

branch created Workforce Safety and Insurance and has a responsibility in this area.

Chairman Carlson said the Legislative Assembly is the board of directors and the Legislative Council will keep on top of this issue.

Representative Skarphol said he believes they should proceed to get new computers for legislators. Chairman Carlson said he was going to name legislators to work on this and report to the Legislative Management Committee. After further discussion, Chairman Carlson named Representatives Skarphol and Kaldor and Senators Robinson and Wardner to serve in this capacity. He said others may be named to the task.

Representative Skarphol said in addition to reviewing computers, he would like to review technology. Chairman Carlson said there are budgetary limitations but he is open to consider whatever might be recommended.

Senator Robinson said this process has been taxing on everyone, and he has received numerous e-mails on the subject of the appointment of a new director. He commended the current staff for its work.

Senator Flakoll said there is confusion with the name of the Legislative Council and the staff of the Legislative Council.

Senator Stenehjem commended the current director, the legislative budget analyst and auditor, and the assistant director. He asked Mr. Smith to review the job description for the director and make recommendations on changes.

Chairman Carlson said he had made two of the most difficult telephone calls of his life yesterday--one to the director and one to the assistant director--telling them what he planned to recommend. He said he appreciated the position they were in and the way they handled his telephone calls.

No further business appearing, Chairman Carlson adjourned the meeting at 2:00 p.m.

John D. Olsrud
Director

ATTACH:1