

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Thursday, January 31, 2008

Conference Room A, Skydancer Hotel and Casino, Highway 5 West
Belcourt, North Dakota

Representative Merle Boucher, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Merle Boucher, Duane L. DeKrey; Senators Stanley W. Lyson, Tim Mathern, Dave Oehlke

Member absent: Representative Dawn Marie Charging

Native American Citizens' Task Force Members present: David Brien, Chairman, Turtle Mountain Band of Chippewa Indians; Cheryl Kulas, Executive Director, Indian Affairs Commission; Marcus Wells, Jr., Chairman, Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation

Native American Citizens' Task Fork Members absent: Ron His Horse Is Thunder, Chairman, Standing Rock Sioux Tribe; Myra Pearson, Chairman, Spirit Lake Nation; Michael Selvage, Sr., Chairman, Sisseton-Wahpeton Oyate

Others present: See [Appendix A](#)

Chairman Boucher introduced Senator David O'Connell, Lansford, and Senator Richard Marcellais, Belcourt, and invited them to sit with the Tribal and State Relations Committee. Chairman Boucher also recognized former Senator Dennis Bercier, Belcourt.

It was moved by Senator Lyson, seconded by Senator Mathern, and approved on a voice vote that the minutes of the September 17, 2007, meeting be approved as distributed.

INDIAN EDUCATION ISSUES

Chairman Boucher recognized Dr. Harold K. Larson, Superintendent of Schools, Standing Rock Community School, Fort Yates. Dr. Larson presented written testimony ([Appendix B](#)) regarding Indian education issues. He said the fact that tribally controlled or tribal grant schools are not eligible to receive state foundation aid is a long-term injustice to Indian children.

Chairman Boucher recognized Mr. Clyde Naasz, Assistant Superintendent, Standing Rock Community School, Fort Yates. Mr. Naasz presented written testimony ([Appendix B](#)) regarding funding issues confronting the Standing Rock Community School system as a result of inadequate funding by the state. He said the Standing Rock Community School has been deprived of foundation aid for the past 29 years. He said the Standing Rock Community School transitioned from the classification of a Bureau of Indian Affairs school to a tribal grant school on July 1,

1994. As a result of a change in the North Dakota Century Code (NDCC), he said, foundation aid to Indian grant schools is not allowed.

Chairman Boucher recognized Mr. Steven C. Emery, Legal Counsel, Standing Rock Community School, Fort Yates. Mr. Emery presented written comments ([Appendix B](#)). Under the 14th Amendment to the United States Constitution and Article VIII, Section 1, of the Constitution of North Dakota, he said, the state is required to provide public education to all children, including Indian children, within the state of North Dakota. He said the state's Indian reservations and the communities on the reservations and near the reservations are the fastest growing areas of the state. Also, he said, Indian children are more likely to stay in the state as adults and thus any investment made by the state in education of Indian children will be beneficial for the state. He said if it were not for tribal members in rural North Dakota, the rural areas of the state would be moribund and the state has an opportunity, with a small statutory change, to correct this error. He said that given the level of federal oversight that the United States does for the school pursuant to federal statute and regulation, it is clear that the Standing Rock Community School should be included in NDCC Section 15.1-29-10, which authorizes tuition contracts with federal officials. He said Section 15.1-29-10 should be amended to provide: "A school board may contract with federal and tribal officials for the education of students in a federal or tribal school."

In response to a question from Senator Lyson, Mr. Emery said the state's Indian schools would not lose any federal funds if state law were changed to make these schools eligible for state foundation aid.

Representative Boucher addressed the committee. He said the progress that the Turtle Mountain community has made during his lifetime has been amazing and much of the credit for this progress is due to the investment that the people of Turtle Mountain have made in education. However, he cautioned, that with state funds also comes state accountability and noted that there have been accountability issues in the past.

In response to Representative Boucher's comments, Mr. Emery said that the Standing Rock Community School and Tate Topa School would likely be required to meet or exceed the other relevant criteria set forth in NDCC Title 15.1 governing elementary and secondary education in order to

obtain state funding. He said the schools are prepared to have their teachers meet the appropriate accreditation and certification standards, and the schools are prepared to meet the state accreditation standards.

Chairman Boucher recognized Dr. Larson. Dr. Larson said that in conclusion there are two matters of concern that he would like to address. He said there are a number of teacher retirements facing Indian schools and very little is being done to prepare the Indian school system for this reality. He said the Standing Rock school system is struggling to retain and attract teachers, counselors, and special education staff members. He said this crisis requires the immediate attention of the Legislative Assembly.

Another concern, Dr. Larson said is the racism, lack of understanding, lack of sensitivity, and ignorance of the majority population of North Dakota concerning Indian culture. He said it is time to offer and require Native American studies which would promote understanding, sensitivity, and respect for the Native American tribes of North Dakota.

Chairman Boucher recognized Ms. Kulas. Ms. Kulas distributed a schedule ([Appendix C](#)) of North Dakota schools that serve American Indian students and a schedule ([Appendix D](#)) of Title I programs.

Chairman Boucher recognized Mr. Tom Decker, Department of Public Instruction, Bismarck. Mr. Decker distributed a memorandum ([Appendix E](#)) to Duane F. Poitra concerning a proposed contract between Belcourt Public School District and Ojibwa School. Mr. Decker said the Superintendent of Public Instruction is very concerned with Indian education issues and has worked closely with the Indian Affairs Commission on these issues.

Chairman Boucher recognized Dr. Viola LaFontaine, Superintendent of Schools, Turtle Mountain Community School, Belcourt. She said the Turtle Mountain Community School is a kindergarten through grade 12 school with approximately 1,648 students. She said she is a product of the Turtle Mountain Community School and received a good education. She said test scores at the Turtle Mountain Community School are improving. However, she said, standardized test scores should not be the only measure of how schools are performing. She said other factors, especially for schools in Indian country, should be used in determining whether a school is meeting adequate yearly progress standards.

Concerning the Commission on Education Improvement, Dr. LaFontaine said most aspects of education in North Dakota are well-represented. However, she said, there is no representative of the state's Indian schools. She said any education task force in the state should have a representative of the state's Indian schools.

In response to a question from Ms. Kulas, Dr. LaFontaine said working with children at an earlier

age and working with families are two methods to improve literacy.

In response to a question from Ms. Kulas, Dr. LaFontaine said the primary barrier to successful education outcomes is attendance issues.

Chairman Boucher recognized Ms. Lana DeCoteau, Superintendent of Schools, Dunseith Public School District, Dunseith. Ms. DeCoteau said one of the chief issues facing her school is education finance. She said even if a student resides outside the district, the school must pay the cost of education if one or both of the parents reside within the district. She said this is a burden on the Dunseith School District and payments should be made based upon where the child resides and attends school.

Chairman Boucher recognized Mr. Michael Blue, Principal, Ojibwa Indian School, Belcourt. Mr. Blue said the chief problem facing the Ojibwa Indian School is education finance. He said the school is facing a significant shortfall and this shortfall is making it difficult to provide quality education to the school's students.

CASE MANAGEMENT SERVICES IN INDIAN COUNTRY

Chairman Boucher recognized Ms. Maggie Anderson, Director, Medical Services, Department of Human Services, Bismarck. Ms. Anderson presented testimony ([Appendix F](#)) concerning targeted case management services in Indian country.

Chairman Boucher recognized Ms. Bev Mathiason, Director, Rolette County Social Services, Rolla. Ms. Mathiason discussed county human service caseloads in Indian country. She said county social service providers are charged with providing many services, including temporary assistance for needy families, food stamps, medical assistance, fuel assistance, child care, foster care, home and community-based services, and child protection services. She said Rolette County is unique in many ways as it is one of the few rural counties with a growing population. As a result, she said, the challenges facing county social service providers in Rolette County are great. She said providing transportation for clients to services is a challenge in Rolette County. Other issues, she said, include affordable housing, lack of medical care, and attracting and retaining staff. She said reimbursement rates are substantially below the actual cost of providing services and thus social service providers are unable to compete in attracting and retaining staff to provide needed services.

In response to a question from Mr. Brien, Ms. Mathiason said 650 of the state's 2,400 temporary assistance for needy family caseloads are in Rolette County. She said 26 percent of the state's temporary assistance for needy families caseload is in the Devils Lake region which includes the Spirit Lake Nation and the Turtle Mountain Indian Reservation.

Chairman Boucher recognized Ms. Dinah Breland, Social Services, Bureau of Indian Affairs, Belcourt. She said the Bureau of Indian Affairs' Social Services served approximately 775 families in the past month and combined with families receiving services from Rolette County Social Services there are 1,300 to 1,400 households in need. She said her agency works well and coordinates social services with the county social service systems.

In response to a question from Mr. Brien, Ms. Breland said there are approximately 400 single individuals--men or women--receiving social services each month on the Turtle Mountain Indian Reservation.

In response to Ms. Breland's comment, Mr. Brien said this is a reflection of the high unemployment rate on the reservation and that employment programs and the resultant lower unemployment would help to address this problem.

CHILD SUPPORT ENFORCEMENT IN INDIAN COUNTRY

Chairman Boucher recognized Mr. Mike R. Schwindt, Director, Child Support Enforcement, Department of Human Services, Bismarck. Mr. Schwindt presented written comments ([Appendix G](#)) concerning the interactions between the tribes and the state on child support enforcement services.

In response to a question from Ms. Kulas, Mr. Schwindt said the Three Affiliated Tribes is the only tribe in North Dakota that has a federally funded child support enforcement program. However, he said, the Turtle Mountain Band of Chippewa Indians is progressing toward an operational program.

In response to a question from Senator Mathern, Mr. Schwindt said the federal regulations governing child support enforcement provide flexibility for the tribes to recognize cultural differences that the tribes have from the states. Under these regulations, he said, each tribe may customize its own child support enforcement program and determine how the tribe wishes to operate its program. He said the goal of the North Dakota child support enforcement system is to interpret the regulations in a flexible manner to benefit the parties, especially the children involved.

In response to a question from Senator Mathern, Mr. Schwindt said it is up to the tribe to determine which payment model, such as the obligor model or shares model, it wishes to use for its child support enforcement system.

Chairman Boucher recognized Judge Beverly May, Turtle Mountain Tribal Court, Belcourt. Judge May discussed child support enforcement in Indian country. She said women are having children at a younger and younger age and the solution to this problem is better education. She said individuals should receive education on the cost of raising a child. She said a separate tribal code child enforcement provision and a separate child support enforcement

system for the Turtle Mountain Band of Chippewa Indians is very important.

Judge May presented a resolution ([Appendix H](#)) relating to child support enforcement adopted by the Tribal Council of the Turtle Mountain Band of Chippewa Indians. She said the resolution resolves that the state of North Dakota is not allowed to file any lawsuits against any tribal members in tribal court on child support proceedings without first obtaining approval from the tribal council; or prior to the state filing the lawsuit in tribal court, the tribal court must consult with the tribal council and the tribal attorney.

Chairman Boucher recognized Mr. Brien. Mr. Brien said the resolution is a result of many people petitioning the tribal council concerning abuses or perceived abuses in the child support enforcement system. He said the tribal council adopted the resolution to promote discussion of the issue on the reservation.

In response to a question from Mr. Brien, Mr. Schwindt said no state has a provision that requires the custodial parent to account for the use of child support payments.

Chairman Boucher recognized Ms. Patricia Hodney, Special Assistant Attorney General, Child Support Enforcement, Devils Lake. Ms. Hodney presented written testimony ([Appendix I](#)) concerning child support enforcement in Indian country and the interaction between the Turtle Mountain Tribal Court and the Devils Lake Regional Child Support Enforcement Unit on child support services.

Chairman Boucher recognized Mr. Don Bruce, attorney, Belcourt. He said the child support enforcement system is dysfunctional. He said he was aware of cases that had been dismissed in state court and the state child support enforcement unit has subsequently filed the same case in tribal court. He said that is one reason for the resolution adopted by the Tribal Council of the Turtle Mountain Band of Chippewa Indians.

INDIAN AFFAIRS COMMISSION

Chairman Boucher recognized Ms. Kulas who discussed the statutes governing the Indian Affairs Commission, a schedule of commission network and outreach efforts, and a history of the commission's budget ([Appendix J](#)).

In response to Ms. Kulas's presentation, Senator Mathern said the Indian Affairs Commission is underfunded and overworked and the Legislative Assembly should act to redress these issues.

In response to Ms. Kulas's presentation, Mr. Brien said perhaps the state's Indian tribes should have representation at the state level.

Chairman Boucher recognized Senator Mathern. Senator Mathern said the committee should consider a bill draft to amend the statutes governing the Indian Affairs Commission to insert the correct tribal names, add the chairman of the Sisseton-Wahpeton Oyate as a member, and provide a mechanism whereby the

commission could accept funds from tribal and other sources.

It was moved by Senator Mathern, seconded by Representative DeKrey, and carried on a voice vote that the Legislative Council staff be requested to prepare a bill draft to revise the Indian Affairs Commission as suggested.

No further business appearing, Chairman Boucher adjourned the meeting at 6:07 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:10