

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

JUDICIARY COMMITTEE

Thursday, February 11, 2010
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Chris Griffin, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Chris Griffin, Lois Delmore, Edmund Gruchalla, Patrick R. Hatlestad, Kathy Hogan, Robert Kilichowski, Joyce M. Kingsbury, Kim Koppelman, William E. Kretschmar, Lisa Wolf, Steven L. Zaiser; Senators Stanley W. Lyson, Dave Nething, Curtis Olafson, Mac Schneider

Members absent: Representative Lawrence R. Klemm; Senator Jim Dotzenrod

Others present: Representatives Shirley Meyer and Merle Boucher, members of the Legislative Management, were also in attendance.

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

It was moved by Representative Delmore, seconded by Representative Kingsbury, and carried on a voice vote that the second sentence of the fifth paragraph on page 4 of the minutes of the September 16, 2009, meeting be corrected to read as follows: He said the Gaming Studio was a spinoff of a company called Great Gamble that he founded in 1982 as a licensed distributor of gaming products for North Dakota charitable gaming.

It was moved by Representative Delmore, seconded by Representative Wolf, and carried on a voice vote that the minutes of the September 16, 2009, meeting, as amended, be approved.

REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

Chairman Griffin called on Mr. William Neumann, Executive Director, State Bar Association of North Dakota, for testimony regarding the Revised Uniform Limited Liability Company Act. Mr. Neumann said in September 2009 the committee asked the State Bar Association of North Dakota to appoint a task force to study the Revised Uniform Limited Liability Company Act. He said Mr. William Guy was named as chairman of that task force. He said the task force recommendation is to postpone consideration of this uniform law until the 2013 session. He said Mr. Guy, who was unable to attend the meeting, cited three reasons for the task force recommendation. First, he said, only two states--Iowa and Idaho--have enacted the Revised Uniform Limited Liability Company Act. He said Iowa's adoption has not gone well and will require significant amendments in Iowa's next

legislative session. Second, he said, North Dakota's current Limited Liability Company Act, which is a fairly recent enactment that has been regularly updated, is serving the state's citizens well. He said these two facts may suggest that the state's best course of action may be to retain our current law and enact the Revised Uniform Limited Liability Company Act as an alternative. Finally, he said, Minnesota is working on an effort to retain their current Limited Liability Company Act and is trying to find a way to incorporate aspects of the Revised Uniform Limited Liability Company Act as an alternative available to those entities that may want to utilize it in Minnesota. He said Minnesota's work product and experience with the project may be a valuable resource for North Dakota to use if consideration is delayed until 2013. He submitted [written testimony](#).

In response to a question from Representative Kretschmar, Mr. Neumann said the task force has been working with the Secretary of State's office to gather information from other states.

Chairman Griffin called on Mr. Alvin A. Jaeger, Secretary of State, for testimony regarding the Revised Uniform Limited Liability Company Act. Mr. Jaeger said he concurs with the recommendation of Mr. Guy. He said the current limited liability company law in North Dakota was enacted in 1993. He said research on the Revised Uniform Limited Liability Company Act indicates that other states have concerns about the adoption of the revised Act.

In response to a question from Senator Nething, Mr. Jaeger said as written, the Revised Uniform Limited Liability Company Act would undo the current limited liability company structure in the state. He said the adoption would hurt those businesses operating under current law. He said the Revised Uniform Limited Liability Company Act appears to be designed more for large national companies than for smaller companies.

Chairman Griffin said the committee would receive more information regarding the Revised Uniform Limited Liability Company Act at the committee's next meeting.

UNIFORM DEBT-MANAGEMENT SERVICES ACT STUDY

Chairman Griffin called on Mr. Timothy Karsky, Commissioner, Department of Financial Institutions, for comments regarding the Uniform

Debt-Management Services Act. Mr. Karsky said he has had discussions regarding the adoption of the Uniform Debt-Management Services Act with Mr. Parrell Grossman, Director, Consumer Protection and Antitrust Division, Attorney General's office. He said he and Mr. Grossman are both of the opinion that better oversight is needed for debt-management services and that the appropriate agency to regulate this type of activity may be the Department of Financial Institutions. He said the Department of Financial Institutions has not looked into the cost of supervising debt-management services within the department. He said the Department of Financial Institutions has not talked with anyone from the debt-management services industry to discuss concerns. He said if the committee is interested in recommending the Uniform Debt-Management Services Act, amendments to the Uniform Act will be needed. He said one of the concerns is whether to adopt the required licensure of both for-profit and not-for-profit companies. He said if the state is going to regulate the industry, both types of companies should be regulated. He said other areas to be addressed are the collection of fees and the department's ability to issue enforcement actions that are consistent with other entities that the department licenses. He submitted [written testimony](#).

In response to a question from Representative Koppelman, Mr. Karsky said he would prefer licensing over registering as a method of regulating debt-management companies. He said when a license is issued the license can be revoked for violations. He said there may be 100 to 200 companies that potentially could be licensed under the Uniform Act. He said he would anticipate employing two to three individuals to handle the regulation of the debt-management services companies that would be licensed in the state.

In response to a question from Representative Griffin, Mr. Karsky said he is not aware of any federal regulations regarding debt-management services companies. He said the Federal Trade Commission may be handling some of the complaints.

In response to a question from Senator Schneider, Mr. Karsky said regulation of debt-management services companies in other states is typically done by either a consumer fraud department or a banking department.

Chairman Griffin called on Mr. Grossman for additional comments regarding the Uniform Debt-Management Services Act. Mr. Grossman said he agrees with Mr. Karsky's preference for licensing rather than registering debt-management services companies. He said the Uniform Debt-Management Services Act, as written, is not popular among other Attorneys General around the country. He said while the Uniform Act is an improvement over no law, it is in need of improvements. He said Illinois is considering a bill that is significantly more comprehensive than the Uniform Act.

In response to a question from Representative Wolf, Mr. Grossman said his division has not received complaints from consumers regarding debt-management services companies but has had complaints from bankruptcy trustees regarding these companies. He said his division has initiated an investigation of one debt-management settlement company. He said most of the consumer credit counseling services companies, which are nonprofit, are legitimate.

In response to a question from Representative Koppelman, Mr. Grossman said because of cases that may be unique to a state, a uniform law may not work well for all states. He said it is likely that the law that would work best is a combination of the Uniform Act and other states' laws.

In response to a question from Representative Delmore, Mr. Grossman said significant resources will be needed to regulate the debt-management services industry. He said regulation will include licensing, bonding, and monitoring. He said the goal is to have a law that provides for accountability but that allows legitimate companies to do business.

In response to a question from Senator Nething, Mr. Grossman said the deceptive practices among debt-management services companies have become a real problem over the past several years. He said the industry is ripe for abuse because the industry targets consumers who are desperate for help. He said the state's current law regarding consumer fraud is very broad and would allow the Attorney General to take action if needed. He said a specific law may allow the Attorney General to move more quickly against a company.

In response to a question from Representative Griffin, Mr. Karsky said he and Mr. Grossman will continue to review the Uniform Act and the laws of other states and will prepare a bill draft for the committee.

CHARITABLE GAMING AND RACING STUDY

Chairman Griffin called on Mr. Keith Lauer, Director, Gaming Division, Attorney General's office, for testimony regarding the charitable gaming study. Mr. Lauer said he is conducting a survey of gaming organizations regarding charitable gaming in the state and any recommendations those organizations may have for changes. He said the deadline for responding to the survey is February 15, 2010. He said he believes the charitable gaming tax process could be simplified. He said there is still confusion among gaming organizations when preparing tax returns. He said he will provide the results of the survey to the committee in advance of the committee's next meeting. He said the Gaming Commission is in the process of developing new gaming rules. He provided a copy of the [survey](#).

In response to a question from Senator Lyson, Mr. Lauer said public hearings on the draft rules were

held in several cities around the state, including Williston. He said the Gaming Commission will be taking comments on the new rules at meetings in Grand Forks, Bismarck, and Fargo. He said he will inform the Gaming Commission of Senator Lyson's concerns about the lack of public hearings in the western part of the state.

In response to a question from Senator Olafson, Mr. Lauer said there are some gaming organizations that have been in the gaming business for a long time but are unable to make a profit for their charity. He said for those gaming organizations for which the expenses exceed the profits, the gaming organization is forced to pay the charity from other sources.

Chairman Griffin called on Mr. Thomas L. Trenbeath, Chief Deputy Attorney General, Attorney General's office, for testimony regarding the administration of racing. Mr. Trenbeath said the responsibility for the administration of racing began in the Secretary of State's office in 1987, was transferred to the Attorney General in 1989, and was removed from the Attorney General in 2005. He said the 2005 legislation made the Racing Commission a freestanding agency; however, the Attorney General still retains audit and license approval authority. He said the Attorney General also provides legal services for the Racing Commission. He said Assistant Attorney General Bill Peterson has the Racing Commission portfolio. He said the Racing Commission has had problems with taxation. He said because of 2009 legislative changes, North Dakota now has one of the lowest tax rates in the country. He said North Dakota's main competitor for racing is Oregon. He said another problem that has faced the Racing Commission is the disagreement among those in the racing industry regarding the distribution of the racing funds. He said the hiring of Mr. Winston Satran as racing director was a positive change for the Racing Commission.

In response to a question from Senator Olafson, Mr. Trenbeath said the key to the Racing Commission's success in functioning as a stand-alone agency is its director. He said it does not make sense to separate the administration of the Racing Commission between two separate state agencies as was proposed in the 2009 legislation. He said if the Attorney General is responsible for the administration of the Racing Commission, the commission should be advisory only.

Chairman Griffin called on Mr. Douglas Goehring, Agriculture Commissioner, for testimony regarding the administration of the Racing Commission. Commissioner Goehring said the only services provided by his department to the Racing Commission are regulations regarding the moving of equine across borders and the quarantining of equine. He said splitting the functions of the Racing Commission between the Attorney General and the Agriculture Commissioner would cause more problems. He said the current racing director has a good handle on the process, and racing is functioning well. He said it

would not be in the best interest of the Racing Commission to split the functions among other agencies.

Chairman Griffin called on Mr. Winston Satran, Director, Racing Commission, for testimony regarding racing issues. Mr. Satran recognized Mr. Jim Ozbun, Chairman, Racing Commission, Dickinson, who was in attendance. Mr. Satran said he has agreed to take the position of director on a full-time, temporary basis.

Mr. Satran discussed the 2009 racing season in Fargo at the North Dakota Horse Park, which is operated by Horse Race North Dakota. He said as a result of some concerns about the management practices at the Fargo track, the Racing Commission hired Eide Bailly LLP to conduct a financial review of Horse Race North Dakota. He said some of the areas of concern that led to the review were the lack of centralized ordering of concession supplies, the lack of a budget, and overspending. He said following the 2009 racing season, the track was over \$216,000 in debt. He said the financial report recommendations were mostly related to management practices. He said there also were concerns about the reported attendance at the races. He said he will recommend to the Racing Commission that the recommendations of the report must be followed before races are allowed to continue at the North Dakota Horse Park. He provided a copy of the [Eide Bailly LLP financial report](#).

In response to a question from Representative Wolf, Mr. Satran said Heather Benson is no longer the general manager of the North Dakota Horse Park.

In response to a question from Representative Meyer, Mr. Satran said Horse Race North Dakota owns three parcels of land. He said when Horse Race North Dakota attempted to borrow money using one of those parcels of land as collateral, it was learned that the ownership of the parcel was not actually in Horse Race North Dakota's name, but rather was in the city of Fargo's name. He said he did not know why the land was deeded to the city of Fargo rather than Horse Race North Dakota.

In response to a question from Senator Nething, Mr. Satran said as a result of the racing tax changes that were passed in 2009, four new account wagering companies have begun doing business in the state. He said one site is experiencing bets of \$400,000 per week. He said account wagering companies have a contract with racetracks. He said individuals make deposits with account wagering companies.

Mr. Satran also discussed international wagering. He said that as a result of a 2004 federal tax law change, foreign bettors are no longer taxed by the United States on their winnings. He said an account wagering company that has 4 of the top 10 bettors is interested in North Dakota. He said there is a second company with international bettors which is also interested in North Dakota. He said these companies could generate thousands of dollars for the horse funds and the general fund. He said the Attorney General and the Racing Commission are working on

regulations to allow for international and electronic wagering to come to the state. He said there is a need to bring the state's laws and regulations up to date. Regarding the administration of racing, he said the Legislative Assembly should wait four years and then reevaluate the Racing Commission.

In response to a question from Senator Olafson, Mr. Satran said the Racing Commission approves licensing for the racetracks. He said the Racing Commission invited the board of directors of Horse Race North Dakota to meet with the commission to discuss the areas of concern.

In response to a question from Representative Koppelman, Mr. Satran said because of Oregon's lower tax rate, North Dakota had been losing account wagering business to Oregon. He said the two states' tax rates are now comparable.

In response to a question from Representative Koppelman, Mr. Ozbun said the Racing Commission has heard the "wake-up call," is working well, and has good leadership.

In response to a question from Representative Kretschmar, Mr. Satran said Horse Race North Dakota, which is a nonprofit corporation, owns the facilities used for the races in Fargo, including the bleachers and trailers. He said the stables are owned by North Dakota State University.

In response to a question from Representative Delmore, Mr. Satran said he would like to see the Racing Commission be in better shape before the authority for the commission is assumed by another state agency.

In response to a question from Senator Schneider, Mr. Satran said a number of states, including Oregon, could serve as a model for the Racing Commission in drafting laws and regulations for account wagering. He said the Racing Commission belongs to an international racing commissioners' organization that serves as a great resource.

In response to a question from Representative Boucher, Mr. Satran said a decision has not been made yet as to whether Horse Park North Dakota will have 2010 race dates. He said the Belcourt track has requested one additional race date for 2010. He said the current balance of the three horse racing funds is as follows: breeders' fund - \$621,000, promotion fund - \$255,000 with \$118,000 obligated, and purse fund - \$173,000 with \$88,000 obligated to the Belcourt track. He said he feels good about what Belcourt is doing to continue racing. He said Belcourt is working on an improvement plan.

In response to a question from Representative Meyer, Mr. Satran said more decisions regarding Horse Race North Dakota will be made at the Racing Commission's next meeting on February 23, 2010.

Representative Delmore said she is concerned about the lack of accountability of the Racing Commission, especially if the commission is entering international wagering.

Chairman Griffin called on Mr. Lance Hagen for testimony regarding the racing study. Mr. Hagen said

Mr. Satran is doing a good job as director. He said the Governor has made some good appointments to the Racing Commission. He said lowering the tax rate was necessary for North Dakota to attract bettors. He said with an increase in international betting, the Legislative Assembly should consider giving the Attorney General oversight over the Racing Commission. He said the Racing Commission may not always have the quality director it has now.

In response to a question from Representative Meyer, Mr. Hagen said the Racing Commission is the only stand-alone agency that does not have a system of checks and balances. He said although the Commission on Legal Counsel for Indigents is a stand-alone agency, the director of that agency--Robin Huseby--is a licensed attorney. He said Ms. Huseby's law license provides a check and balance for that agency.

Chairman Griffin called on Mr. Eric Casey, Planet Bingo, Fargo, for testimony regarding electronic pull tabs. Mr. Casey said the bingo and pull tab industry continues to change its product mixes. He said one of the biggest impediments to a changing industry is getting the necessary legislative changes. He said the use of paper products, or consumables, for gaming was the norm in the 1970s and 1980s. He said technology has caused the bingo and pull tab industry to evolve. He said electronic gaming allows for a computerized point-of-sale system. He said a computerized system results in the need for less inventory, reduces shipping costs, and is a more efficient use of labor. He said the greatest advantage of electronic gaming is the detailed reporting that is possible. He said the computerized reporting can be based upon what is required by state law. He said electronic pull tabs can be conducted as a stand-alone game or with bingo. He said the Gaming Commission approved an electronic pull tab system several years ago, but the decision was overturned by the Attorney General. He said Canada has had success with electronic pull tabs. He said the Commonwealth of Virginia authorized the use of electronic pull tabs by adding "or electronic versions thereof, as approved by the gaming commission" to the state's law. He said Virginia is working on rulemaking for its electronic pull tab system. He conducted a PowerPoint demonstration of the electronic pull tab process.

In response to a question from Senator Schneider, Mr. Casey said Canada has seen a significant increase in gaming following the introduction of electronic pull tabs. He said players tend to stay longer and play more than with the paper product.

In response to a question from Representative Hatlestad, Mr. Casey said in addition to the financial savings that a gaming organization would incur by using electronic pull tabs, the electronic version of the game would attract a different demographic. He said electronic gaming would attract new people to gaming.

In response to a question from Representative Wolf, Mr. Casey said electronic pull tab technology would allow for credit card use. However, he said, the decision whether to allow credit cards for gaming would be a decision for the Legislative Assembly and the Gaming Commission.

In response to a question from Senator Olafson, Mr. Casey said the cost of electronic gaming would not be cost prohibitive for smaller organizations because the manufacturer pays for the cost of the product. He said electronic gaming can be put in any area cost effectively regardless of how small. He said as is done now with paper tickets, the manufacturer's take on electronic tickets would be on a per ticket basis.

Chairman Griffin called on Mr. Derald A. Payne, Dickinson, for a demonstration of a game developed by Mr. Payne. Mr. Payne referred to the game as "the horse racing game." He explained the rules of the game and conducted a brief demonstration. He also explained the accounting procedures he has developed for the game. He said the game has been popular in the senior centers in Dickinson. He said the game would work well as a charitable game for the state because the concept is simple yet the game is interactive and fun to play. He provided a copy of the [horse racing game rules and accounting procedures](#).

Chairman Griffin called on Ms. Karen Breiner, President, Charitable Gaming Association of North Dakota (CGAND), for testimony regarding charitable gaming. Ms. Breiner said CGAND, which represents 12 of the top 20 organizations based upon gross proceeds, is supportive of changes to the tax structure of charitable gaming as long as no organization would be penalized by paying an increase in taxes because of these changes. She said CGAND supports and encourages any additional reductions in gaming taxes. She said CGAND would like the committee to consider increasing the minimum bet in blackjack to \$2 per hand, increase the number of occasions that an organization can conduct poker events, and allow electronic variations of existing game types. A copy of her written testimony is on file in the Legislative Council office.

In response to a question from Senator Olafson, Ms. Breiner said gaming organizations are allowed two poker events per year. She said some organizations have more than one site. She said she would like the law changed to allow poker events to be based on a per site basis rather than a per organization basis.

Chairman Griffin called on Mr. Joe Richardson, Gaming Studio, Inc., Fargo, for testimony regarding the charitable gaming study. Mr. Richardson said the Legislative Assembly should consider giving the Gaming Commission trade secret authority. He said

this would allow for the demonstration of electronic games without divulging trade secrets.

Chairman Griffin said Mr. Richardson, who expressed concerns about charitable games demonstrations, is welcome to conduct a demonstration for the committee at an upcoming meeting.

CRIMINAL OFFENSES AND PENALTIES STUDY

Chairman Griffin called on Mr. Ladd Erickson, McLean County State's Attorney, Washburn, for testimony regarding the criminal offenses and penalties study. Mr. Erickson said most of the penalties and the dollar amounts that trigger the penalties were set in the 1970s and 1980s. He said he is surveying all the state's attorneys in the state for input on potential changes to certain criminal offenses. He said he will provide the committee with a bill draft that addresses some of the state's attorneys' suggestions.

In response to a question from Representative Delmore, Mr. Erickson said it is important to focus on where the felony and misdemeanor lines are drawn.

In response to a question from Senator Olafson, Mr. Erickson said felonies create resource problems for the state.

In response to a question from Representative Wolf, Mr. Erickson said the dollar amounts that trigger the various levels of crimes should be reviewed. He said \$500 in the 1970s economy would be the equivalent of \$2,200 today.

Chairman Griffin called on Mr. Jeff Weikum for testimony regarding the criminal offenses and penalties study. Mr. Weikum, an attorney in private practice, said he will work with the state's attorneys on a bill draft.

COMMITTEE DISCUSSION

Chairman Griffin said Mr. Erickson will provide his bill draft to the Legislative Council staff in advance of the next meeting for drafting.

Chairman Griffin said the committee will receive an update on the Revised Uniform Limited Liability Company Act from Mr. Jaeger at the next meeting.

Chairman Griffin said Mr. Karsky and Mr. Grossman will provide recommendations regarding the Uniform Debt-Management Services Act at the committee's next meeting.

No further business appearing, Chairman Griffin adjourned the meeting at 2:30 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:1