

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIARY COMMITTEE

Monday, January 12, 1998
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Wayne Stenehjem, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Wayne Stenehjem, Marv Mutzenberger, Carolyn Nelson, Darlene Watne; Representatives Charles Axtman, Duane L. DeKrey, Lois Delmore, G. Jane Gunter, Roxanne Jensen, Scot Kelsh, William E. Kretschmar, Andrew G. Maragos, Shirley Meyer, Paul Murphy, Darrell D. Nottestad, Leland Sabby, Allan Stenehjem

Members absent: Senators Rolland W. Redlin, John T. Traynor; Representatives Kathy Hawken, Gerald O. Sveen

Others present: See Appendix A

APPROVAL OF MINUTES

It was moved by Senator Nelson, seconded by Representative Delmore, and carried on a voice vote that the minutes of the October 27-28, 1997, meeting be approved as mailed.

COURT UNIFICATION STUDY

Chairman Stenehjem called on Mr. Fred Miller, National Center for State Courts, for comments concerning the results of a study of the consolidation and state funding of clerks of court. Mr. Miller presented a draft report of the center's study, a copy of which is on file in the Legislative Council office.

Mr. Miller said the study indicated that 23 counties could have their clerk of court functions consolidated. He said consolidated counties would have their court support functions restructured while maintaining public access to the court without full-scale clerk of court operations. He said that registers of deeds offices in the 23 counties would handle court filings and other tasks. He said the counties recommended for consolidation under the study were Billings, Burke, Divide, Dunn, Eddy, Golden Valley, Grant, Griggs, Hettinger, Kidder, LaMoure, Logan, McIntosh, Nelson, Oliver, Renville, Sargent, Sheridan, Sioux, Slope, Steele, Towner, and Wells. He said these 23 counties have 25.73 full-time equivalent (FTE)

clerk of court positions. He said the state could consider reimbursing the county for a .25 FTE mid-level clerk salary for assisting in filing of documents, assisting clients in emergency matters, and accessing and shipping files. He said the final report of the study is being prepared and will be available in two to three weeks.

In response to a question from Representative Kretschmar, Mr. Miller said he is not aware of any states that are changing from elected to appointed clerks of court.

Chairman Stenehjem called on Mr. Steve Pine, Landman's Association of North Dakota, Bismarck, for comments concerning the study. Mr. Pine said the consolidation of clerk services in some counties could have an adverse effect on his profession, which includes accessing public records that may affect oil and gas leases. He said the absence of a clerk of court in a county may affect the ready availability of courthouse records on civil judgments and probate matters.

In response to a question from Senator Stenehjem, Mr. Pine said computer systems do not have an adequate index for searching public records which makes it a slower process than searching manually.

Chairman Stenehjem called on Ms. Patricia Burke, Burleigh County State's Attorney, for comments concerning the clerk of court study. Ms. Burke said prosecutors are concerned about any proposal that could affect ready access to court files. She said there is also a concern about prosecutors' access to judges and the ability of prosecutors to obtain search warrants quickly. She said consolidation should not hamper the ability of state's attorneys to do their job.

Chairman Stenehjem called on Ms. Kay Newell Braget, Clerk of District Court, Pembina County, for comments concerning the clerk of court study and recommendations regarding additional fee sources through the clerk of court office. Ms. Braget said there are several additional fee sources through the clerk's office that could be used to generate additional revenue, including the fees for foreign judgments, annual reports,

petitions for subsequent administration, and certification of lienholders on delinquent tax payments. She also suggested an alternative clerk of court structure. She said the structure would allow for the maintenance of records in each county. A copy of her written testimony is attached as Appendix B.

In response to a question from Representative Kretschmar, Ms. Braget said the duties of the clerk of court and the clerk's employees should be under the state's control in order to have true court unification.

Chairman Stenehjem called on Ms. Rebecca Absey, Deputy Clerk of District Court, Grand Forks County, for comments concerning the study. Ms. Absey said she has prepared a proposal that establishes a three-level structure for clerk of court and support services. She said her proposal allows for the most judicial services in seven Level I sites, which would be located in the state's largest cities. She said Level II sites would give citizens access to clerks' support services and would be provided at courthouses located within a 60-mile radius of the county seat. She said Level III sites would be set by court rule. A copy of her written testimony is attached as Appendix C.

Ms. Absey also submitted written information regarding how imaging, electronic filings, KIOSK, and video conferencing could be used under her proposed clerk of court structure. A copy of this information is on file in the Legislative Council office.

In response to a question from Representative Meyer, Ms. Absey said through education, the public could be trained to use computer terminals for accessing information that is now provided by clerk of court personnel.

In response to a question from Representative Nottestad, Ms. Absey said passports may be issued by either the clerk of court or by a post office. She said few post offices in the state issue passports because passports can be obtained through the clerk of court.

Chairman Stenehjem called on Ms. Carol Fey, Deputy Clerk of District Court, McIntosh County, for comments concerning the clerk of court study and related issues. Ms. Fey said clerk of court services should be retained in the smaller, rural counties. She said the people of North Dakota do not want to replace people with computers. She said the Legislative Assembly needs to enhance rural communities, not aid in their demise. A copy of her written testimony is attached as Appendix D.

In response to a question from Senator Stenehjem, Ms. Fey said there is not a need to change

the functions of the clerks of court. She said the clerk of court should remain an elected position because an elected person is more responsible to the people.

Chairman Stenehjem called on Ms. Susan Olson, Clerk of District Court and Register of Deeds, Burke County, for comments concerning the clerk of court study and related issues. Ms. Olson said she is concerned about the lack of services in outlying areas if consolidation plans are carried out. She said while fax machines, computers, and the Internet are valuable tools, there are many elderly persons who cannot or will not learn to use them. A copy of her written testimony is attached as Appendix E.

Chairman Stenehjem called on Ms. Norine Knudson, Clerk of District Court, Stutsman County, for comments concerning the clerk of court study and related issues. Ms. Knudson said she is concerned about the access to judicial services to the more than 300,000 citizens who do not live in one of the four major cities. She said citizens have a right to have their claims heard in their own county. She said being a state employee would not make her a better clerk.

Chairman Stenehjem called on Mr. Robert Indvik, Clerk of District Court, Bottineau County, for comments concerning the clerk of court study and related issues. Mr. Indvik said he supports the idea of a clerk of court to be located in the now chambered cities and that the court could contract with the nonchambered counties for court services. He said this would allow for the maintenance and administration of permanent records that are now located in all counties. A copy of his written testimony is attached as Appendix F.

Chairman Stenehjem called on Ms. Valerie Lukes, Clerk of District Court, Ransom County, for comments concerning the clerk of court study and related issues. Ms. Lukes said she strongly disagrees with the vision plan proposed by Ms. Absey because it appears to serve mainly those citizens residing in the larger communities. Because all citizens pay taxes, she said, all citizens should be entitled to receive the same judicial services, not just those living in the urban areas. A copy of her written testimony is attached as Appendix G.

Chairman Stenehjem called on Ms. Alice Grove, Clerk of District Court, Kidder County, for comments concerning the clerk of court study and related issues. Ms. Grove said all North Dakota citizens are entitled to receive judicial services at a reasonably convenient location. She said aging taxpayers deserve respect and access to services. She said if clerk of court services were reduced or

eliminated in some counties, it is likely that attorneys who reside in those areas would also move out of the area.

In response to a question from Representative Meyer, Ms. Grove said elderly persons often do not have the expertise to operate a computer. She also said many persons are unsure of the services they actually need and should be able to talk to a real person, not a computer.

Chairman Stenehjem called Judge William McLees, Northwest Judicial District, Watford City, for comments concerning clerk of court issues. Judge McLees said he has seen the evolution of court unification since he first became a judge in 1978. The abolishment of county courts in favor of district courts has been a positive change, he said; however, the removal of clerks of court from some counties would not be a positive change. He said the public is not clamoring for this change. If North Dakota is trying to entice people back to the state, he said, this is not the way to accomplish it. He said it makes sense to have the clerks under the state system, but it does not make sense to take the clerks out of the counties.

Chairman Stenehjem called on Mr. Ronald Torbenson, Ransom County Commissioner, Enderlin, for comments concerning clerk of court issues. Mr. Torbenson said clerks of court should be retained in all counties.

Chairman Stenehjem called on Mr. Miller for his comments concerning the weighted caseload study conducted by the National Center for State Courts. Mr. Miller said when conducting the study, the center looked at how long it takes to handle various types of cases, not just the number of cases or the number of people in the state. In gathering information, he said, the center reviewed the type of case and the frequency of each type of case to determine the case weight. The case weight, he said, was then multiplied times the number of filings to determine the weighted filings. He said the center's final determination was that there are 3.84 more FTE judges in the state than are needed to handle the state's caseload. He said the findings are only a guide. He said subjective elements such as fluctuations in population in some parts of the state, an increase in aging population, and a decrease in the juvenile population all have an impact on judicial caseload. He submitted a spreadsheet explaining the center's conclusions, a copy of which is attached as Appendix H.

In response to a question from Senator Watne, Mr. Miller said the use of judicial referees was considered in determining the number of judicial FTEs.

In response to a question from Representative Kretschmar, Mr. Miller said the state may want to consider the shifting of some judicial district boundaries to balance the judicial FTEs.

Chairman Stenehjem requested that the committee receive copies of the weighted caseload study final report.

Chairman Stenehjem called on Mr. Keith Nelson, Supreme Court, who provided the committee with a list of the counties that have requested state funding of their clerk of court office. He said as of January 8, 1998, 15 counties--Mercer, Barnes, Cass, Ransom, Burleigh, Stark, McHenry, Pembina, Pierce, Rolette, Ramsey, Traill, Wells, McIntosh, and Walsh--have officially requested state funding.

Chairman Stenehjem called on Senator Bill Bowman for comments concerning clerk of court issues. Senator Bowman said it is important that county commissioners be informed of proposed changes and requirements so they are able to make informed decisions regarding their clerk of court and register of deeds.

COMMITTEE DISCUSSION

It was moved by Senator Watne, seconded by Representative Nottestad, and carried on a voice vote that the Legislative Council staff be requested to prepare a bill draft implementing the fee changes suggested in the testimony by Ms. Kay Newell Braget.

Senator Watne requested that the committee be provided with information on the fiscal impact of those fee changes.

Representative DeKrey asked that the Association of Counties be requested to work with the Supreme Court and the Legislative Council staff to determine the costs of the clerk of court consolidation proposals presented to the committee.

DISCRIMINATION IN NORTH DAKOTA STUDY

Chairman Stenehjem called on Mr. Ray Falk, Investigator, Division of Human Rights, South Dakota Department of Commerce and Regulation, for comments regarding the South Dakota Commission of Human Rights.

Mr. Falk said the function of the South Dakota Commission of Human Rights is to promote equal opportunity through the enforcement of the state's Human Rights Act. He said 95 percent of the complaints received by the division are employment-related. He said the commission employs two full-time investigators, one part-time secretary, and one part-time director. He said either party to a complaint has the option to

resolve the matter in court. A copy of his testimony is attached as Appendix I. He also submitted information regarding South Dakota's statutes, administrative rules, and caseload statistics, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Watne, Mr. Falk said about one or two housing discrimination complaints are received each year.

In response to a question from Representative Axtman, Mr. Falk said the commission has the authority to order backpay in employment discrimination cases; however, only the federal agencies have the authority to award punitive damages.

In response to a question from Representative Nottestad, Mr. Falk said before the South Dakota Commission of Human Rights was established in 1972, the state did not have a state agency to address discrimination complaints.

In response to a question from Senator Nelson, Mr. Falk said the housing discrimination complaints are usually race-related.

In response to a question from Representative Delmore, Mr. Falk said two of the commission members are attorneys. He said the division and the commission also can use the services of the South Dakota Attorney General. He said commission members are paid only for their attendance at meetings.

In response to a question from Senator Stenehjem, Mr. Falk said when a decision of the commission is appealed to the state's circuit court, the complete record of the commission's hearing is included.

Chairman Stenehjem called on committee counsel to present a memorandum entitled *State Discrimination Laws: Human Rights Commissions* which discusses the human rights commission of Arizona, Colorado, Idaho, Minnesota, Montana, Oklahoma, South Dakota, Washington, and Wyoming.

Chairman Stenehjem called on Mr. Ron Ness, North Dakota Labor Department, for comments concerning the discrimination study. He said the department could seek a grant from the federal Department of Housing and Urban Development to handle housing discrimination cases, but legislative action would be required to authorize the department to apply for the grant. He said there are at least 13 states that do not have a human rights commission that is authorized to handle all types of discrimination complaints.

In response to a question from Senator Stenehjem, Mr. Ness said he does not anticipate any impact to the way employment discrimination complaints are handled by the department when

the Labor Commissioner position changes from an elected to an appointed position.

In response to a question from Representative Delmore, Mr. Ness said a human rights commission would be helpful for advisory purposes. He said the South Dakota commission hears few cases because the parties have the option to take their cases to court.

In response to a question from Representative Meyer, Mr. Ness said the North Dakota Fair Housing Council has only the authority to take housing discrimination complaints and to forward them to the appropriate federal agency.

Chairman Stenehjem requested that the testimony of Ms. Holly Marion, Director, Office of Community Relations, Grand Forks, be distributed. The testimony, which discusses the findings of the Office of Community Relations regarding issues of discrimination, is on file in the Legislative Council office.

CHARITABLE GAMING STUDY

Chairman Stenehjem called on Mr. Keith Lauer, Gaming Division, Attorney General's office, for comments concerning a suggested legislative action related to bingo and related gaming issues.

Mr. Lauer distributed a chart that provides information on the amounts wagered per capita, by county for the fiscal year ended June 30, 1997. He said the amounts varied from a low of \$118.12 in Benson County to a high of \$693.14 in Burke County. He said the average amount wagered per capita in the state is \$430.66. A copy of the chart is on file in the Legislative Council office.

In response to a question from Representative Maragos, Mr. Lauer said approximately five to six percent of the amount wagered per capita goes to the state in the form of taxes. He said there is a statewide average of 80 percent payback to the players.

Mr. Lauer also presented a suggested law change for the game of bingo. He said the change would provide that for a site where bingo is not the primary game, the licensed organization would not be allowed to pay bingo prizes in which the total bingo prizes exceeded 90 percent of the bingo gross proceeds for the quarter. A copy of the proposed legislation is attached as Appendix J.

Chairman Stenehjem called on Mr. Chuck Keller, Gaming Division, Attorney General's office, for comments concerning video surveillance and other charitable gaming issues. Mr. Keller said the Attorney General's office recommends no change in the law regarding video surveillance. He said about \$1.5 to \$2 million has been

invested in the equipment which involved about 275 sites and 550 tables. He said the office believes the law has proven very effective in deterring and detecting dealer cheating and stealing and recommends that the law continue as is. A copy of his written testimony is attached as Appendix K. He also submitted information regarding percent-of-hold for the game of 21, a copy of which is on file in the Legislative Council office.

In response to a question from Representative DeKrey, Mr. Keller said North Dakota's percent-of-hold is on track with other states with similar charitable gaming operations.

Chairman Stenehjem called on Ms. Dianne Sheppard, Chief Executive Officer, The ARC, Upper Valley, Inc., Grand Forks, for comments concerning how the organization addresses excess gaming expenses. Ms. Sheppard said her organization is allowed a total of 58 percent of adjusted gross proceeds for gaming expenses. She said gaming expenses usually run around 67 percent. She said expenses are incurred mainly from employment costs. She said increases in minimum wage, the low unemployment rate, the need to hire an additional assistant gaming manager, the costs of games and supplies, security expenses, and video surveillance are all reasons for the organization's increase in gaming expenses. She said the organization is able to reimburse its excess gaming expenses by fund-raising, golf and softball tournaments, jeans day, and state grants. The organization continuously monitors its excess expenses, she said, to avoid being faced with a large excess expense reimbursement at the end of the year.

Ms. Sheppard said excess gaming expenses are a problem. She said charitable gaming revenues have been decreasing for the past two years while expenses have increased. She said there should be a way to offset the expenses with revenue. The funds taken from charitable gaming, she said, through taxation, limitations, and conduct of play are eating away at charitable proceeds. She said it is projected that in 1998 the state will make \$57,000 more from charitable gaming than will the ARC. She said there is also a need for more law enforcement of gaming, especially in light of the amount of taxes paid by the organizations. She said gaming has been good

for charities, but the rules, regulations, and taxes are diminishing the benefits that should be going to the charities.

In response to a question from Representative Meyer, Ms. Sheppard said law enforcement needs to be better educated on charitable gaming. She said video surveillance has helped to reduce cheating. She said the gaming rules and regulations are very complicated and difficult to enforce.

In response to a question from Representative Delmore, Ms. Sheppard said the state should not rely on charitable gaming taxes as a funding source.

Chairman Stenehjem requested that a copy of a letter from Mr. Ronald Gibbens, President, North Dakota Association for the Disabled, Inc., be distributed. The letter from Mr. Gibbens concerns the difficulty of organizations to address the problem of excess expenses. According to Mr. Gibbens, his organization is able to reimburse the excess expense by use of contributions and grant and service income. A copy of his letter is attached as Appendix L.

COMMITTEE DISCUSSION

It was moved by Representative Kretschmar, seconded by Representative Maragos, and carried on a voice vote that the Legislative Council staff be requested to prepare a bill draft based on the recommended law change to bingo that was submitted by the Attorney General's office.

Chairman Stenehjem requested that the Attorney General's office attempt to obtain information on the amount spent by North Dakota residents on out-of-state lottery sales, such as in Minnesota and South Dakota.

It was moved by Representative Delmore, seconded by Representative Maragos, and carried on a voice vote that the meeting be adjourned. Chairman Stenehjem adjourned the meeting at 3:45 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:12