

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIARY COMMITTEE

Tuesday and Wednesday, May 19-20, 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, Rolland W. Redlin, John T. Traynor, Darlene Watne; Representatives Charles Axtman, Duane L. DeKrey, Lois Delmore, G. Jane Gunter, Kathy Hawken, Scot Kelsh, William E. Kretschmar, Andrew G. Maragos, Shirley Meyer, Paul Murphy, Darrell D. Nottestad, Leland Sabby, Allan Stenehjem, Gerald O. Sveen

Members absent: Senator Carolyn Nelson, Representative Roxanne Jensen

Others present: See attached appendix

APPROVAL OF MINUTES

It was moved by Representative Maragos, seconded by Senator Mutzenberger, and carried on a voice vote that the minutes of the January 12, 1998, meeting be approved as distributed.

COURT UNIFICATION STUDY

Chairman Stenehjem called on Chief Justice Gerald VandeWalle, Supreme Court, for comments concerning the final report of the National Center for State Courts regarding consolidation and state funding of clerks of court. Chief Justice VandeWalle said the study, which was commissioned by the Supreme Court, has not met with unanimous acceptance by those persons who may be affected by it. He said the study was conducted in response to the directive by the 1997 Legislative Assembly which required the judicial branch budget for the 1999-2001 biennium and future bienniums to include funding necessary to efficiently fund administration of the district courts. He said his understanding of this directive is that to efficiently fund the administration of the district courts means that the state will not be assuming the costs for 53 clerks of court.

Chief Justice VandeWalle said there is a cost-benefit ratio that the Legislative Assembly and the counties will have to consider; that is, is the

reduced cost to the counties worth the loss of local presence and service. He said this is not a decision to be made by the judiciary, but rather one that must be made by the Legislative Assembly. He said the final report points out a number of duties performed by clerks of court that are nonjudicial functions. He said the Legislative Assembly and the counties will need to decide who should assume those duties in those counties in which the position of clerk of court is assumed by the state.

Chairman Stenehjem called on Mr. Keith Nelson, State Court Administrator, Supreme Court, for estimated expenditures for implementing the recommendations of the clerk of court study. Mr. Nelson said final budget information would not be available until later in the year; therefore, the data was being provided for estimation purposes only. He said the preliminary budget estimates were prepared for three programs. First, he said, the amount estimated county spending for clerks of court in all 53 counties would be \$11.4 million. He said this amount contains a variable of plus or minus 10 percent because of the lack of certainty regarding the numbers. He said, therefore, this figure could range from \$10.2 million to \$12.5 million.

Second, Mr. Nelson said, the estimated amount for funding of the 27 counties that have applied for state funding under North Dakota Century Code Section 11-17-11 is \$11.9 million. Allowing for a variable plus or minus 10 percent, the amount could range from \$10.7 million to \$13 million. He said Section 11-17-11 allows counties to apply for state funding of their clerk of court offices. He said 48 counties had applied for state funding, but a number of the applications were rejected because they did not meet the criteria of Section 11-17-11. He said this section requires the county to have a separate clerk of court office that is not combined with another county office. He said only 27 of the 48 counties that applied met the criteria of Section 11-17-11. Under this section, he said, the state would be required to assume all the present functions of

the clerk of court and, as a result, the costs are higher.

Third, Mr. Nelson said, the estimated amount for state funding of the 30 counties that were recommended in the National Center for State Courts study would be \$11.2 million, plus or minus 10 percent, for a range of \$10.1 million to \$12.3 million. He said under the study, 30 counties would be funded by the state and the remaining 23 counties would be consolidated. He said this estimate is based on the assumption that staffing requirements would require one full-time clerk for every 600 filings. He said this would reduce the number of full-time clerk positions in the 30 counties from 152.8 current positions to 125 positions. He said the consolidation of clerk of court services in the remaining 23 counties that would not be state-funded would account for an additional savings of 25.73 full-time equivalent positions. He said the estimated budget amount is also based upon the assumption that the clerk positions will be paid a salary comparable to similar state positions. He said the \$11.2 million estimate includes a .25 full-time equivalent position that is to be provided in each consolidated county to provide for a continuation of services through the register of deeds or other county official.

In response to a question from Representative Kretschmar, Mr. Nelson said the estimated figures are for a biennium.

In response to a question from Senator Stenehjem, Mr. Nelson said to determine the number of filings, he calculated the filings filed through the state UCIS system. He said that a filing does not include administrative traffic filings.

Chairman Stenehjem called on Mr. Robert Indvik, Clerk of District Court, Bottineau County, for comments concerning the clerk of court study. Mr. Indvik said the North Dakota Clerk of Courts Association passed a resolution of nonendorsement of the National Center for State Courts report. He said the resolution received unanimous support by the members of the association. He said the National Center for State Courts has no vested interest in the level of court services to be provided to citizens of the state and has little concern for maintaining the state's rich rural heritage. He said the authors of the report minimize the services provided by the clerk of court, such as records management and public contact with the court. He said the adoption of the study's recommendations would result in the reduction of services and access to the courts for many citizens in the state. Mr. Indvik provided written testimony, a copy of which is on file in the Legislative Council office.

Chairman Stenehjem called on Judge Thomas K. Metelmann, Northeast Judicial District, for comments concerning the clerk of court study. Judge Metelmann provided the committee a copy of a letter from Mr. Nicholas B. Hall, President, Northeast Judicial District Bar Association, in which Mr. Hall stated that the association unanimously adopted the resolution adopted by the North Dakota Clerk of Courts Association.

Judge Metelmann said the Northeast Judicial District, which is an entirely rural district consisting of 11 counties, operates on the premise that judicial services are to be provided to rural communities in an efficient and cost-effective manner. He said the consolidation plan proposed in the study would lead to increased costs for participants, the need for new facilities to be built at state expense, and a severe limitation on the public access to justice for rural citizens. A copy of Judge Metelmann's written testimony and the letter from Mr. Hall are on file in the Legislative Council office.

In response to a question from Representative Sveen, Judge Metelmann said the study does not indicate whether the clerks' offices in the nonconsolidated counties will need additional space and personnel to receive the additional traffic from the consolidated counties. He said the study only allows for a .25 full-time equivalent position in each of the consolidated counties to carry out responsibilities for record storage and for directing people to a location where they can receive clerk of court services. In the long run, he said, the study plan will not result in cost savings, but rather will result in a reduction in services in the consolidated areas.

In response to a question from Senator Traynor, Judge Metelmann said the study does not address the issue of caring for and insuring the safety of court records. He said circumstances of some cases require access to files that may be 30 years old or older.

In response to a question from Representative Murphy, Judge Metelmann said the increased costs involved in moving trials to the larger counties was not considered in the study.

In response to a question from Senator Stenehjem, Judge Metelmann said the clerks of court in the Northeast Judicial District collect imposed fees and monitor their collection.

Chairman Stenehjem called on Mr. Terry Elhard, State's Attorney, McIntosh County, for comments concerning the study. Mr. Elhard said under the study plan, McIntosh County is one of the 23 counties designated to be consolidated. If the plan is implemented, he said, the records from the county would be housed in either Linton

or Bismarck. He said that means the records could be housed up to 125 miles from McIntosh County. The study suggests that fax machines be used to transmit documents; however, he said, in many cases a certified copy of the document is required. He said the study plan would not only result in a loss of jobs but in a loss of services as well. He said the study plan should be rejected. He said his county is willing to fund its own clerk of court office rather than lose the services provided by that office.

In response to a question from Representative Delmore, Mr. Elhard said there may be other counties that are willing to fund their own clerk of court offices.

Chairman Stenehjem called on Ms. Karin Fischer, Deputy Clerk of Court, LaMoure County, for comments concerning the study. Ms. Fischer submitted petitions that contained signatures of persons who supported the idea of retaining a clerk of court in each county. The petitions are on file in the Legislative Council office. She said the Southeast Judicial District Bar Association is opposed to the plan proposed in the study. She said it is the position of the clerks of court in the Southeast Judicial District that a clerk of court should be retained in every county; that clerks should remain county employees; that a change in the structure of judicial services of the magnitude proposed by the National Center for State Courts should be put to a public vote; and that the best use of state resources would be to facilitate local clerks by coordinating technological and educational services. She said the structure for an efficient court system already exists, and the state should maximize the use of existing facilities and staff. Ms. Fischer submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Watne, Ms. Fischer said the existing court rules call for a uniform filing system and record retention policy throughout the state. She said the goal of the clerks of court is to bring all counties into compliance with the records retention policy.

In response to a question from Representative Murphy, Ms. Fischer said filings have increased 10 percent each year in LaMoure County and that other counties are most likely experiencing similar increases.

Chairman Stenehjem called on Ms. Pamela Tamayo Stenehjem, Clerk of District Court, Dunn County, for comments concerning the study. Ms. Stenehjem said the final report of the National Center for State Courts lists five trial court performance standards that include access to justice; expedition and timeliness; equality, fairness, and integrity; independence and

accountability; and public trust and confidence. She said the report does not meet its own measure of standards. She said the plan, which was proposed as a cost-cutting measure for the state, will not benefit rural constituents. Ms. Stenehjem submitted written testimony and signed petitions in support of retaining a clerk of court in each county, copies of which are on file in the Legislative Council office.

In response to a question from Representative Meyer, Ms. Stenehjem said filings have increased every year in Dunn County. She said there are 250 to 300 criminal cases filed each year and approximately 1,000 traffic offenses.

Chairman Stenehjem called on Ms. Alice Grove, Clerk of District Court and Register of Deeds, Kidder County, for comments concerning the study. Ms. Grove said she has numerous concerns with the study, especially the study's conclusions regarding the delivery of clerk services to people; efficiency and cost; and the effect on local infrastructure. She said the study suggests that because of the state's decreasing and aging population, less services should be expected. She said government must be responsive to the people. She said the plan proposed in the study would not result in savings, but rather would result in loss of services.

Chairman Stenehjem called on Mr. Dennis Schulz, Clerk of District Court and Register of Deeds, Logan County, for comments concerning the study. Mr. Schulz said with the proposed state funding and consolidation of clerks of court, the service provided by the clerks to the county is being placed in jeopardy. He said there are no facts to support the premise that consolidation will save tax dollars for the citizens of the state. He said it is important that the committee give credence to the court consolidation study conducted in Iowa which concluded that geographical consolidation is less economical than simply hiring more judges in counties where a backlog exists. As a result of the Iowa study, he said, the idea of rural consolidation in Iowa was dropped and new judge positions were proposed. He said many similarities can be drawn between the rural situations in Iowa and North Dakota. He said there is a need for clerk of court services in every county in the state and this should not be a rural versus urban issue. Mr. Schulz submitted written testimony and petitions containing signatures of citizens in Logan County in support of retaining clerk of court services in each county, copies of which are on file in the Legislative Council office.

Chairman Stenehjem called on Ms. Carol Fey, Deputy Clerk of District Court, McIntosh County, for comments concerning the study. Ms. Fey said

the South Central Judicial District has some points of concern regarding the study. She said efficiency can be achieved without consolidating rural counties. She said the South Central Judicial District is against consolidation of rural counties, and she feels that the push for consolidation is being made by people in the state who are so far removed from a rural atmosphere that they cannot imagine the effect it would have on rural North Dakota. She said if it is determined that the state must fund the clerks of court in order to have a unified judicial system, then the funding should be for all 53 counties. A copy of Ms. Fey's written testimony and petitions containing signatures of persons in support of retaining a clerk of court in each county are on file in the Legislative Council office.

In response to a question from Senator Redlin, Ms. Fey said uniformity of clerks' duties could be achieved through efforts of the Clerk of Courts Association.

In response to a question from Senator Traynor, Ms. Fey said attempts are being made statewide to provide for uniformity of forms used by clerks of court.

Chairman Stenehjem called on Ms. Susan Olson, Clerk of District Court, Burke County, for comments concerning the study. Ms. Olson said the clerks of the Northwest Judicial District are unanimously opposed to the plan proposed by the National Center for State Courts. She said the consolidation unfairly penalizes the rural population of the state. She said by making clerks appointed rather than elected positions, the people of the state are losing their right to choose their officials. She said consolidation would likely lead to a redistribution of income and employment from rural counties to regional trial court centers. While some smaller counties may feel they cannot afford to retain their clerks' offices, she said, it should be left up to the individual counties to determine how they will provide clerk of court services. Ms. Olson submitted written testimony and petitions containing signatures of persons in support of retaining a clerk of court in each county which are on file in the Legislative Council office.

Chairman Stenehjem called on Mr. Steve Pine, Landman's Association of North Dakota, Bismarck, for comments concerning the study. Mr. Pine said there are concerns on the effect consolidation would have on his profession, which includes accessing public records that may affect oil and gas leases. He said time is often of the essence in title search matters; therefore, it is important that there be a register of deeds and clerk of court in each county. He said the committee needs to consider the ramification of

consolidation on economic development programs. He said large companies will not consider locating in an area where certain court services are not available.

Chairman Stenehjem called on Ms. Linda Rohrbach, Deputy Clerk of District Court, McIntosh County, for comments concerning the study. Ms. Rohrbach said in the past, clerks have enjoyed a camaraderie and have been willing to share ideas with each other and were always willing to offer advice. She said that has changed in the past year. Court consolidation studies, surveys, proposals, and testimony, she said, have pitted everyone against everyone--clerks against clerks, districts against clerks, judges against clerks, districts against districts, and especially, urban against rural. She said the Legislative Assembly should do what is in the best interest of all counties, not just the urban counties. Ms. Rohrbach submitted written testimony, a copy of which is on file in the Legislative Council office.

Chairman Stenehjem called on Ms. Annetta Anderson, Clerk of Court, Bowman County, for comments concerning the study. Ms. Anderson said Bowman County's application for state funding of its clerk of court office was rejected because the county did not separate its clerk of court office from its register of deeds office. She said splitting the offices would have meant the county would have to bear the cost of another elected official. She said consolidation of clerk of court services in some counties will cause economic development to work in reverse because of the outmigration of attorneys and their families. She also said consolidation may result in diminished services to citizens, place an additional burden on the courts of the larger counties, reduce services, increase the potential for the loss of documents in the mail, and increase the cost to counties for more storage space when space is already at a premium. She said she is not adverse to change, but change is not always for the betterment of the people it serves. Ms. Anderson submitted written testimony, a copy of which is on file in the Legislative Council office.

Chairman Stenehjem called on Ms. Karen Feist, Abstracter, Southwest Abstract and Title Company, Bowman, for comments concerning the study. Ms. Feist said the consolidation of clerk of court services in some counties would adversely affect abstracters and title insurance agents and their search of dockets for judgments and chains of title. She said the abstracters and title agents would also bear the additional burden as they would have to drive to the central location to examine the filings, an expense that would have to be passed on to the consumer. Ms. Feist

submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Watne, Ms. Feist said a large number of abstracts are still done in rural areas.

Chairman Stenehjem called on Ms. Faye McIntyre, Clerk of District Court, Ramsey County, for comments concerning the study. Ms. McIntyre said she is the president of the clerks association and that the resolution in opposition to the study adopted by the association received unanimous support from the association's members. She said consideration must be given to the ramifications that consolidation would have on those counties that would lose their clerk of court services. Although Ramsey County would not lose its clerk of court services under the study plan, she said, the county would be impacted by consolidation because of the additional staffing, services, and record storage the county would have to assume. She said easy accessibility to records is vital to many professions.

Chairman Stenehjem called on Ms. Valerie Lukes, Clerk of District Court, Ransom County, for comments concerning the study. Ms. Lukes said the results of a survey published in *The Forum* indicated that most people were in favor of consolidation, but the results may have been skewed because of the way the questions were phrased. She said there is uncertainty among clerks as to whether consolidation is a "done deal" and if so, when it will happen.

Chairman Stenehjem said there are many decisions that need to be made by the Judiciary Committee, the Legislative Council, and the next Legislative Assembly before any consolidation plans would be implemented.

Committee Discussion

Representative Maragos said the committee should consider inviting a representative of the North Dakota Association of Counties to the next meeting for the association's ideas on the issue of consolidation and state funding of clerks of court.

Representative Nottestad said it appeared from the testimony that clerks from both the large and the small counties were opposed to the consolidation plan proposed in the report of the National Center for State Courts.

Chairman Stenehjem said 1997 Senate Bill No. 2002 directs the Supreme Court to include in its budget for the 1999-2001 biennium the funding necessary to efficiently fund the administration of the district courts. He said the Judiciary Committee has the option of giving direction with regard to that legislation either in the form of a policy statement or a bill draft or the committee may opt to make no recommendation.

Representative Kretschmar said the committee may want to consider adopting a policy that clerk of court services should be retained in all 53 counties. He said adopting this policy would not prohibit a county from consolidating offices or services if that is what the county decides.

Senator Redlin said the committee has an obligation to respond to the provision in 1997 Senate Bill No. 2002 which directed the judicial branch to propose a budget that would efficiently fund the district courts.

Representative Maragos said the committee may want to consider taking the position that the 1997 Legislative Assembly erred in passing Senate Bill No. 2002 in the form that it did. He said the committee should make recommendations as to how the next Legislative Assembly should address the issues.

Representative DeKrey said each county should have the option to fund its own clerk of court office or have the state fund the office.

Senator Stenehjem said because clerks of court work for the district court, the clerks should be part of the judicial branch and the costs should be assumed by the state. He said, however, it would be too costly for the state to assume the costs for all 53 counties. He said any plan that is adopted must work well for all areas of the state.

Representative Kretschmar said as part of the ongoing court unification process, it is the duty of the Legislative Assembly to provide adequate court services to all citizens.

It was moved by Representative Kretschmar, seconded by Representative Maragos, and carried on a voice vote that it is the policy of the committee to continue to provide clerk of court services in every county in the state.

Bill Draft

At the request of Chairman Stenehjem, committee counsel presented a bill draft regarding the fees charged by clerks of court. She said the bill draft imposes a new fee for three types of filings including an \$80 fee for petition for subsequent administration, a \$10 fee for filing a trust registration, and a \$10 fee for filing of annual reports by guardians. She also said the bill draft increases the fee for the filing of foreign judgments and decrees from \$10 to \$80.

At the request of Chairman Stenehjem, Mr. Jim Ganje, Supreme Court, presented information regarding the potential fiscal impact of the fee changes proposed in the bill draft. Mr. Ganje said in 1997 there were 326 foreign judgment filings. He said if the fee were increased to \$80, the total fee revenue would be \$52,160 per biennium as compared to \$6,520 under the current \$10 filing fee. He said 121 trust registrations were filed in

1997. If a \$10 fee were imposed for those filings, he said, \$2,420 per biennium in fee revenue would be generated. He said filing data regarding subsequent administrations and annual report filings by guardians are not available. Under the draft, he said, any revenue derived from the new or increased fees would be retained by the counties. A copy of Mr. Ganje's fiscal estimates is on file in the Legislative Council office.

It was moved by Senator Traynor, seconded by Representative Nottestad, and carried on a voice vote that the bill draft regarding fees charged by clerks of court be amended to increase the amount proposed for the filing of a trust registration from \$10 to \$80 and that language be added to include the filing of a petition for allowance of trustees' annual reports or other remedies.

DISCRIMINATION IN NORTH DAKOTA STUDY

At the request of Chairman Stenehjem, committee counsel presented a memorandum entitled *Survey of Discrimination Calls*. She said the committee requested that several state agencies and departments as well as several state's attorneys be requested to track the number of complaints received by the agency or department from citizens who have been victims of discrimination and the nature of the discrimination.

Chairman Stenehjem called on Ms. Laurie Sterioti Hammeren, Human Resources Director, Department of Human Services, for comments concerning the calls received during the tracking period by the Department of Human Services. Ms. Sterioti Hammeren said the department uses a brochure to notify each applicant for department services of their rights under the various state and federal nondiscrimination statutes. She said because the state does not have a human rights commission or other centralized receiving place for complaints or concerns by the public, she often refers the callers to an entity that may be of assistance to the caller. She said two other divisions within the department often receive discrimination calls, including the director of the Governor's Committee on Employment of People with Disabilities and the state coordinator of the Americans with Disabilities Act. She said, on average, the department receives 10 to 20 complaints per month which are not related to department programs. Ms. Sterioti Hammeren provided written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Murphy, Ms. Sterioti Hammeren said callers are frequently advised that they must contact an

attorney for advice on how to handle their discrimination concerns.

In response to a question from Senator Stenehjem, Ms. Sterioti Hammeren said she often refers housing discrimination complaints to the North Dakota Fair Housing Council. She said not all calls of discrimination are actually violations of a law but are perceived to be discrimination by the caller.

In response to a question from Representative Axtman, Ms. Sterioti Hammeren said most of the complaints are from different callers. She said there are few repeat callers.

Chairman Stenehjem called on Ms. Carole Barrett, North Dakota Advisory Committee to the United States Commission on Civil Rights, for comments concerning the discrimination study. Ms. Barrett said the advisory committee has held factfinding meetings to obtain testimony from citizens, elected and appointed government officials, business owners, private and public agencies, and leaders of various organizations. She said the advisory committee will be releasing a preliminary study report based on the findings of the committee which will be released in late fall or early winter. She said the advisory committee, based on its study, is convinced there are issues and instances of human rights violations in the state which are significant enough to warrant action by the Judiciary Committee. She said the advisory committee strongly suggests that there is a need to draft or support legislation to establish a North Dakota Human Rights Commission. She said the basic authority should be vested in this commission to investigate and mediate alleged discrimination, and the commission must have enforcement powers. She said human rights are inalienable rights and all citizens of the state need to be assured of basic human protections. Ms. Barrett submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Traynor, Ms. Barrett said the enforcement powers of a human rights commission should be similar to those now used by the courts.

In response to a question from Representative Hawken, Ms. Barrett said the creation of a human rights commission does not necessarily mean creating another layer of government, but rather could be accomplished by consolidating the services into a single agency.

In response to a question from Representative DeKrey, Mr. Wayne Wenstrom, Labor Department, said the department could handle additional discrimination enforcement duties, but additional staff would be necessary. He said a federal grant from the Department of Housing and Urban Development may be available if the Labor Department

were to be assigned the duty of investigating housing discrimination complaints.

In response to a question from Senator Watne, Mr. Wenstrom said when investigating employment discrimination complaints, the department attempts to negotiate a settlement between the parties. If a settlement cannot be reached and there is a finding of probable cause, he said, the department may issue a formal charge. If conciliation attempts are unsuccessful, the person is given a "right to sue" letter and the person may pursue the matter with the Equal Employment Opportunity Commission.

CHARITABLE GAMING STUDY

Chairman Stenehjem called on Mr. Rick Stenseth, Charitable Gaming Association of North Dakota, for comments concerning the charitable gaming study. Mr. Stenseth said the association has held meetings throughout the state to get ideas on how to revitalize gaming in the state. He said as a result of the meetings, the association has developed some suggestions and has put those suggestions in bill draft form. The bill draft, he said, proposes to make the rules and fines similar for all types of games. He said the draft also would take some of the rules of conduct and play out of statute and require them to be implemented by administrative rule. He said the draft further contains language that would make some games, such as poker and twenty-one, more playable. A copy of the bill draft proposed by Mr. Stenseth is on file in the Legislative Council office.

In response to a question from Representative Sveen, Mr. Stenseth said the numerous regulations and high taxes on gaming have contributed to the gaming slump in the state. He said, however, that charitable gaming is working as it was originally intended; that is, to provide funding to charitable organizations.

In response to a question from Representative Kretschmar, Mr. Stenseth said the bill draft would allow poker to be played more often than is allowed under current law and that the variations in how poker could be played would appeal to a broader audience.

In response to a question from Senator Redlin, Mr. Stenseth said under the bill draft the gaming commission would not have the authority to change the expense percentages nor could it change the charitable purposes.

Bill Draft

At the request of Chairman Stenehjem, committee counsel presented a bill draft regarding the play of the game of bingo. She said

under the bill draft, a licensed organization's total bingo prizes could not exceed its gross proceeds for a 90-day period. She said the bill draft also provides that if bingo is not the primary game at a site and the site is leased by a licensed organization, the organization may not pay prizes in which the total prizes exceed 90 percent of bingo gross proceeds for a 90-day period.

In response to a question from Representative Kretschmar, Mr. Keith Lauer, Gaming Division, Attorney General's office, said factors such as the amount of gross proceeds and the square footage of the site are used in determining whether a game is to be considered a primary game. He said the changes suggested in this bill draft could be implemented by administrative rule rather than by statutory change.

In response to a question from Senator Redlin, Mr. Lauer said the dollar amount of prizes is usually based on probabilities. He said the prize limit is usually set by the bar owner.

In response to a question from Representative Maragos, Mr. Lauer said while this bill draft may not entirely correct the problem, it will help to assure that some of the proceeds go to the charity and that the proceeds will not all go to the bar owners.

In response to a question from Representative Sveen, Mr. Lauer said there is not a rent limit on bingo sites where bingo is the primary game of chance.

Mr. Lauer presented the committee with information regarding the amount spent by North Dakota residents on lotteries in neighboring states. He said Minnesota determined that based on a count of high tier claims from outside Minnesota, North Dakota residents contribute approximately \$5 million per year to the Minnesota lottery. A copy of the information regarding lottery spending outside North Dakota is on file in the Legislative Council office.

PUBLIC HEARING ON PRIMARY ELECTION BALLOT MEASURE NO. 1

Chairman Stenehjem said the Judiciary Committee has been assigned the duty of conducting public hearings on measures scheduled to appear on the primary and general election ballots. He said the measure on the June ballot relates to the filling of judicial vacancies. He said the measure provides that persons appointed to the Supreme Court or district court positions would serve for at least two years before having to face an election.

Chairman Stenehjem called on Ms. Sandi Tabor, Executive Director, State Bar Association of North Dakota, for comments concerning the

ballot measure. Ms. Tabor said the State Bar Association supports measure No. 1 as a means to ensure the future quality of the judiciary in North Dakota. She said the measure would alleviate the immediate financial pressures associated with running in an election and would allow the newly appointed judge an opportunity to serve the public for a two-year grace period. She said the measure does not eliminate the public's right to vote for the judgeship. She said the measure provides a balance between finding qualified individuals willing to seek judicial appointment and the voters right to elect judges. Ms. Tabor submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Traynor, Ms. Tabor said the Code of Judicial Conduct places restrictions on the campaigning and solicitation of funds by judicial candidates. She said this often makes it difficult for candidates to raise funds and may deter qualified lawyers from running for judicial positions. She said a campaign may result in a significant personal debt for the judicial candidate.

In response to a question from Representative Sveen, Ms. Tabor said the Judicial Nominating Committee uses criteria set by the American Bar Association for determining the qualifications of judicial candidates.

In response to a question from Senator Stenehjem, Ms. Tabor said a judicial candidate must cut himself or herself off completely from that individual's law practice in order to run for a judicial position.

In response to a question from Senator Redlin, Ms. Tabor said the advertising done by judicial candidates can discuss the candidate's practice and experience and the advertising must be truthful and not misleading.

Chairman Stenehjem called on Mr. Alvin Jaeger, Secretary of State, for comments regarding ballot measures. Mr. Jaeger said there is only one measure scheduled to appear on the general election ballot. He said three petitions have been approved for circulation and the deadline for submission of the signed petitions is August 4. He said if the petitions are submitted by August 4, the Secretary of State's office will review the signatures and certify the petitions for the ballot.

There was no other testimony in support or in opposition to the primary election ballot measure.

UNIFORM LAWS

Chairman Stenehjem called on Ms. Marilyn Foss, General Counsel, North Dakota Bankers Association, for comments concerning the Uniform Principal and Income Act (1997). She

said the Act has favorable features; however, Section 104 of the Act is described by the American Bankers Association Trust Committee as "radical" and "without precedent in the law of trusts." She said the premise upon which Section 104 is founded appears to be that the trustee should be able to decide what personal trust receipts are going to be allocated to principal and which will be allocated to income. She said if the trustee has discretion to reallocate receipts between income and principal, the trustee is literally deciding how much each class of beneficiaries will ultimately receive from the trust. She said it is the North Dakota Bankers Association's position that Section 104 should not be adopted as part of the revised Uniform Principal and Income Act in North Dakota. The changes made by that section, she said, are not well received in the trust industry, are not well founded in current law, and are not necessary. Ms. Foss submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Stenehjem, Ms. Foss said the Act can stand alone without Section 104. She said this section grants distinct authority and its removal would not be detrimental to the remainder of the Act.

In response to a question from Senator Traynor, Ms. Foss said if Section 104 were adopted as part of the Act, there could be income tax implications which would favor one class of beneficiaries over another.

Chairman Stenehjem said the committee should request that Mr. Jay Buringrud, Secretary, North Dakota Commission on Uniform State Laws, contact the national office of the Uniform Laws Commission to find out what other states are doing with respect to Section 104 of the Act.

Representative Kretschmar said Sections 103 and 104 were placed in the Act to give trustees an idea of what to do in certain situations, not to limit their authority.

In response to a question from Representative Kretschmar, Ms. Foss said bankers will look to the trust instrument for answers to "sticky" problems. She said the American Bankers Association has taken the position that the Act should be adopted without Section 104. She said the association objected to the section throughout the uniform law drafting process.

CONSTITUTIONAL REVISION

Chairman Stenehjem called on Ms. Jean Mullen, Assistant Attorney General, Attorney General's office, for comments concerning a recent district court decision, *Hoff v. Berg*, Civil No. 97-C-1663, Burleigh County District Court (N.D. Apr. 24, 1998), in which the court declared

North Dakota Century Code Section 14-09-05.1 unconstitutional. The North Dakota Century Code permits grandparents and great-grandparents to petition for visitation with grandchildren. Ms. Mullen said in its decision the district court found "the legislature has gone too far" because it had designed the grandparent visitation "to give the grandparents an absolute and unrestricted right to visitation unless the parent can establish it is not in the best interest of the child." She said the court found the statute facially unconstitutional because it infringed impermissibly on the right of a parent to raise a child without interference from the state. She said the grandparents in this case have not filed an appeal of the decision to the North Dakota Supreme Court. She said the deadline for the appeal is July 3, 1998. She said if the decision is appealed, the Attorney General intends to file an amicus brief supporting the constitutionality of the statute. She said the district court decision in this case does not affect the continued implementation of the grandparent visitation statute in any cases other than *Hoff v. Berg*. Ms. Mullen submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Stenehjem, Ms. Mullen said the Attorney General was not a party to the case and therefore does not have standing to appeal. She said the presumption contained in the statute that the visitation is in the best interest of the child was the main reason for declaring the statute unconstitutional.

Senator Traynor said although the Legislative Assembly adopted the presumption in response to outcries by grandparents, the statute could be abused to the detriment of the child. In response to a question from Senator Traynor, Ms. Mullen said all 50 states have grandparent visitation statutes. She said the uniform standard throughout the United States is that visitation should be granted if it is in the best interest of the child.

Representative DeKrey said the statute infringes on the parents' rights to determine who should see the child and that he agreed with the district court decision.

Chairman Stenehjem called on Mr. Chad Nodland, Attorney, Bismarck, for comments regarding the district court decision. Mr. Nodland said he represented the mother of the grandchild in the *Hoff v. Berg* case. He said the Constitution of North Dakota provides greater protections for

parents than other states' constitutions. He said another case being appealed to the Supreme Court is raising the same issues raised in this case. Mr. Nodland submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Stenehjem, Mr. Nodland said an appeal is planned by the grandparents in the *Hoff* case. He said the court did not appoint a guardian ad litem in the case.

In response to a question from Representative DeKrey, Mr. Nodland said when North Dakota law provides that when parental rights are being taken away, the parents are entitled to counsel.

Chairman Stenehjem called on Ms. Rebecca Banker, R-KIDS, Mandan, for comments concerning the district court case. Ms. Banker said children have a right to have a relationship with their parents and grandparents.

In response to a question from Representative Delmore, Ms. Banker said the child's biological family should be able to have contact with the child despite other family problems.

In response to a question from Representative Meyer, Senator Stenehjem said in an adoption situation, the right of visitation for biological parents and grandparents ends if there is a termination of parental rights.

Chairman Stenehjem said the committee will continue to monitor this case as it proceeds through the appeals process.

OTHER BUSINESS

Chairman Stenehjem said the committee will have two public hearings in the upcoming months on the general election ballot measures as well as on other business of the committee. He said an attempt would be made to hold a meeting in both the eastern and western parts of the state in order to allow more people to be able to attend and express their concerns on the ballot measures.

Chairman Stenehjem adjourned the meeting at 11:55 a.m.

Vonette J. Richter
Committee Counsel

ATTACH:1