

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### JUDICIARY COMMITTEE

Monday and Tuesday, August 17-18, 1998  
Cityscape A Meeting Room, Radisson Inn, Fargo, and  
Student Center, State College of Science  
Wahpeton, North Dakota

Senator Wayne Stenehjem, Chairman, called the meeting to order at 9:00 a.m., on Monday, August 17, 1998, at the Cityscape A Meeting Room, Radisson Inn, Fargo.

**Members present:** Senators Wayne Stenehjem, Carolyn Nelson, John T. Traynor, Darlene Watne; Representatives Charles Axtman, Duane L. DeKrey, Lois Delmore, G. Jane Gunter, Kathy Hawken, Roxanne Jensen, Scot Kelsh, William E. Kretschmar, Andrew G. Maragos, Shirley Meyer, Paul Murphy, Darrell D. Nottestad, Allan Stenehjem, Gerald O. Sveen

**Members absent:** Senators Marv Mutzenberger, Rolland W. Redlin; Representative Leland Sabby

**Others present:** See attached appendix

#### APPROVAL OF MINUTES

It was moved by Representative Maragos, seconded by Senator Watne, and carried on a voice vote that the minutes of the May 19-20, 1998, meeting be approved as distributed.

#### CHARITABLE GAMING STUDY

##### Limits on Bingo Prizes

At the request of Chairman Stenehjem, Mr. Keith Lauer, Director, Gaming Division, Attorney General's office, provided testimony on a bill draft that limits bingo prizes. Mr. Lauer suggested the period on line 8 be replaced with a semicolon.

In response to a question from Representative Maragos, Mr. Lauer said the changes in the bill draft are presently in the North Dakota Administrative Code. He said the administrative rule was first enforced in June of this year. He said the reasons for the Legislative Assembly to adopt the same language in statute as is in the rules would be to show concern for the issues the rules address and to affirm the rules.

In response to a question from Representative Kretschmar, Mr. Lauer said whether a game is a primary game is determined by a number of factors, including the hours of operation and amount wagered. He said the factors are in the Administrative Code.

At the request of Chairman Stenehjem, Mr. Tom Kelsch, representative for the Charitable Gaming

Association of North Dakota, provided testimony in opposition to the bill draft. He said the subject matter in the bill draft is addressed in the administrative rules, and the subject matter is of a technical nature that should be addressed by rules, not in statute.

In response to a question from Representative Delmore, Mr. Kelsch said the Attorney General's office can enforce the rule as easily as they can enforce the statute. He said he does not see a problem with enforcement of the rule.

In response to a question from Senator Watne, Mr. Kelsch said the rules that limit bingo prizes were not in effect at the time of the problem in Minot. He said the rules address the problem that had been experienced in Minot.

In response to a question from Senator Traynor, Mr. Lauer said the 90-day period for determining gross proceeds was the result of negotiations between the Gaming Commission and charities. He said there needs to be a floating period of time and not a definite period of time, e.g., quarterly. He said no charities have complained about the 90-day period.

##### Powerball

At the request of Chairman Stenehjem, Mr. Lauer presented information on Powerball. He said 21 states have Powerball. He said 37 states and the District of Columbia have a lottery. He said the odds of winning at Powerball are one in eighty million. He said the estimated income to this state would be \$5.1 million. He said there would need to be a change in this state's constitution to allow the game of Powerball in this state. A copy of his testimony, an agreement for Powerball, and the rules of Powerball are on file in the Legislative Council office.

In response to a question from Senator Stenehjem, Mr. Lauer said it is estimated that North Dakotans spend \$5 million on Powerball in other states.

In response to a question from Representative Nottestad, Mr. Lauer said the net profit will be approximately 30 percent of gross proceeds. In response to a question from Representative Maragos, Mr. Lauer said the pro rata proportion of administrative and

operating expenses would be approximately 20 percent of gross proceeds.

In response to a question from Senator Stenehjem, Mr. Lauer said the administration of a lottery is done by a lottery commission in most states. He said he knows of three companies that can set up an on-line system for the administration of a lottery.

In response to a question from Senator Traynor, Mr. Lauer said the last failure at adoption of a constitutional amendment to allow lotteries was by a 65 to 35 percent vote.

At the request of Chairman Stenehjem, Mr. Kelsch provided testimony on Powerball. He said there is a concern that it would decrease interest in charitable gaming. He said charitable gaming has been against a lottery in the past and would most likely be against it in the future, unless charitable gaming is involved with the lottery.

**It was moved by Representative Maragos, seconded by Representative Delmore, and carried on a voice vote that the Legislative Council staff be requested to prepare, for the next meeting of the Judiciary Committee, a concurrent resolution to allow this state to enter Powerball.**

#### **Statutory Provisions on Conduct and Play**

At the request of Chairman Stenehjem, Mr. Kelsch provided a legislative proposal on games of chance. He said the proposal changes and removes statutory provisions on conduct and play. He said the changes in the legislative proposal are addressed by rules, and the rules will stay the same unless there is a change in the rules. He said the bill draft will allow the industry to work with the Gaming Commission to make rules for games of chance. He said there are decreased revenues from blackjack, and charitable gaming needs the ability to market new games. He said pull tab machines have helped increase the revenues from pull tabs. He said an example of a rule that might be proposed is one that would allow a win in blackjack by having five cards with a count no higher than 21. He said another example of a change in rules would be to allow a one and one-half times payment for a person who has three sevens or a six, seven, and eight combination. He said the legislative proposal removes limitations on gaming that are in statute. He said presently, any minor change has to go through the legislature and the rules process. He said this may take up to three years. He said this makes the gaming industry nonresponsive to its customers. He said there is no desire to increase wager limits.

Mr. Kelsch said the limitations on poker were removed so that the Gaming Commission would be allowed to consider allowing the playing of poker on a blackjack table in a manner in which the players play against the house, not each other. He said poker and blackjack have detailed statutes on their rules which does not allow any variation in the play of these

games. A copy of the legislative proposal is on file in the Legislative Council office.

In response to a question from Representative Delmore, Mr. Kelsch said the change in the rules on poker are to allow poker to bring in revenues. He said poker does not bring in any revenues at present because it is not a popular game. He said there are variations of poker similar to blackjack. He said the passage of the legislative proposal would not allow regular poker without rules adopted by the Gaming Commission. He said traditional poker is not a good revenue producer for charitable gaming. He said charities would most likely choose poker games that are similar to blackjack.

In response to a question from Representative Delmore, Mr. Kelsch said the poker games would be on a special table. He said they are simple games.

At the request of Chairman Stenehjem, Mr. Rick Stenseth, Charitable Gaming Association of North Dakota, answered questions for the committee. In response to a question from Senator Watne, Mr. Stenseth said the language on page 9 of the legislative proposal which relates to the value of a merchandise prize being its retail price is being removed. He said the reason for the language being removed is because of a discrepancy that says the player must pay the retail value of a prize; however, a gaming site must set the value at cost.

In response to a question from Senator Traynor, Mr. Kelsch said the legislative proposal would give the Gaming Commission the ability to change how games are played so that charitable gaming could stay competitive with other gaming industries. He said the legislative proposal would hopefully increase revenues in charitable gaming.

In response to a question from Senator Traynor, Mr. Kelsch said there is an advisory board, the Gaming Commission, and the Attorney General's office that review gaming issues in this state. He said because of their expertise they are the appropriate entities to make the technical rules for gaming.

In response to a question from Senator Traynor, Mr. Lauer said the legislative proposal provides more authority to the Gaming Commission. He said even though allowed, poker is not played in charitable gaming sites in North Dakota. He said he has no strong feelings on the legislative proposal.

In response to a question from Senator Traynor, Mr. Stenseth said charitable gaming needs to act and react with gaming trends. He said this legislative proposal does not institute change, it allows change. He said the legislative proposal makes no change in wagering or video gaming.

In response to a question from Representative Maragos, Mr. Lauer said gaming proceeds are down approximately \$20 million from a high of \$300 million in 1992. He said this trend is still holding. He said the American Indian casinos have had an effect on charitable gaming.

In response to a question from Representative Axtman, Mr. Kelsch said poker is played in the American Indian casinos. He said it is played on a regular basis.

**It was moved by Representative Stenehjem, seconded by Representative Nottestad, and carried on a voice vote that the Legislative Council staff be requested to prepare the legislative proposal in the proper form and style to be presented as a bill draft at the next meeting of the committee.**

## **CLERK OF COURT STUDY**

### **Bill Draft on Filing Fees**

At the request of Chairman Stenehjem, committee counsel presented the second draft of a bill draft that increases fees for court filings. He said the original bill draft imposed an increased fee or a new fee for several types of court filings. He said the original bill draft imposed 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 annual reports by guardians. The original bill draft increased the fee for filing a foreign judgment or decree from \$10 to \$80. He said the second draft changes the new fee for filing a trust registration from \$10 to \$80 and creates the fee of \$80 for the petition for allowance of a trustee's annual report or other remedies.

Senator Stenehjem called on Ms. Karin Fischer, Deputy Clerk of Court, LaMoure County. She said she is concerned with the language in the bill draft on page 3, line 18, which states there is a filing fee of \$10 for filing any other matter authorized to be filed in the office of clerk of court. She said birth and death certificates are filed with the clerk of court.

In response to a question from Senator Stenehjem, committee counsel said the fees are limited to civil cases.

Senator Traynor said the filing of a trustee's annual report is for the foundation type of trust and not for a living trust. He said these filings take up the court's time. He said these trusts are large business entities.

Senator Stenehjem said the committee will vote on the bill draft at the next meeting so that the Legislative Council staff can investigate Ms. Fischer's concerns.

### **Clerks of Court**

Senator Stenehjem said the clerk of court study may exceed the time the Judiciary Committee has to consider it. He suggested that the North Dakota Consensus Council be involved with all the interested parties to come up with a satisfactory solution.

Representative Jensen said Senator Stenehjem's proposal appears to be a sensible solution to a heated and time-consuming issue. She said the North Dakota Consensus Council would be an impartial observer.

In response to a question from Representative DeKrey, Senator Stenehjem said the cost of the Consensus Council would be less than if the Judiciary Committee had to meet two or three more times. He said he would support the Legislative Council paying for the cost of one meeting of the Judiciary Committee to the Consensus Council.

In response to a question from Representative Sveen, Senator Stenehjem said the Consensus Council is a private organization centered in Bismarck. He said it is a nonpolitical group.

At the request of Chairman Stenehjem, Representative John Dorso provided testimony to the committee. He said the unified court system was created in 1991. He said judges are the fiscal responsibility of the state. He said the process that created the unified court system has worked well despite some pain and contention. He said the Consensus Council facilitated court unification.

At the request of Chairman Stenehjem, Ms. Jodie Koch, Attorney, Valley City, presented testimony to the committee. She said having the Consensus Council develop a legislative proposal concerns her. She said the Judiciary Committee should make any legislative proposal because the Judiciary Committee is a public and open forum. She said her concern is that using another procedure could provide an opportunity for backdoor politics.

Senator Stenehjem said nothing prevents the Judiciary Committee from looking at any legislative proposal from the Consensus Council. He said any legislative proposal from the Consensus Council would have to be introduced and go through the legislative process.

Senator Watne said the Consensus Council idea is an appealing idea. She said it would allow an indepth look at an issue that this committee cannot give considering its other responsibilities.

Representative Maragos said no matter what happens with the Consensus Council, a bill has to go through the legislative system.

In response to a question from Representative Axtman, Senator Stenehjem said the Judiciary Committee could keep jurisdiction of the clerks of court issue even if the Consensus Council worked on a legislative proposal.

At the request of Chairman Stenehjem, Mr. David Paulson, County Commissioner, Richland County, provided testimony to the committee. He said he is in support of the status quo. He commended the committee for looking at using the Consensus Council because it may bring in a broader base of ideas.

In response to a question from Senator Traynor, Senator Stenehjem said he would recommend that someone from the Supreme Court serve on the committee working with the Consensus Council.

At the request of Chairman Stenehjem, Mr. Bill Smith, Commissioner, Sargent County, provided testimony to the committee. He said his county has

combined the clerk of court and register of deeds. He said fines, forfeitures, and fees brought in \$40,000 in his county. He said it costs \$30,000 for their county clerk. He said clerks could be funded on a percentage of fines, forfeitures, and fees. He said clerks are needed to provide service to the people. He said he is against eliminating clerks and supports the current system.

In response to a question from Representative Kretschmar, Mr. Smith said the court system is adequately serving his county. He said a judge comes once or twice a week. He said the removal of county clerks may affect child support payments.

At the request of Chairman Stenehjem, Ms. Vicki Kubat, North Dakota Register of Deeds Association, presented a resolution from the association. She said the resolution is in support of clerk of court services in every county in this state. A copy of the resolution is on file in the Legislative Council office.

At the request of Chairman Stenehjem, Ms. Fischer presented testimony against the consolidation plan. She said the plan will require nonjudicial duties of clerks of court to be assumed by other county offices, state agencies, and other regional clerks of court. She said work will not be eliminated, but redistributed. She said the plan will understaff clerks of court. She said the counties want to keep their clerks of court. She said clerks of court are elected officials that provide services to judges and citizens, but do not work for the judges. She suggested maintaining clerks of court as county employees and restoring some fees to the counties to provide revenues for clerks of court. She said one of the reasons court consolidation works so well is because it was facilitated by the clerks of court. She said clerks of court issue passports. She said the plan does not provide for the issuing of passports. She said clerks of court are elected officials and must be paid for the entirety of their term regardless of consolidation.

At the request of Chairman Stenehjem, Ms. Dorothy Howard, Clerk of Court, Cass County, presented information to the committee. She said there needs to be more study before clerks become a part of the state system. She said counties are still trying to work through court consolidation. She said there needs to be a plan before there is state funding.

Ms. Howard said there are a large number of nonjudicial duties in large counties. She said if the clerks of court did not do these duties, it would put an extra burden on other state agencies, including the Department of Transportation and the Department of Health.

At the request of Chairman Stenehjem, Ms. Laura Loberg, Attorney, Valley City, presented testimony to the committee. She said she sees an urbanization of judicial services. She said North Dakota is a rural state, and rural folks have as much right to services

as city dwellers. She said the removal of clerks will take lawyers out of small communities. She said this will be more costly for people who live in rural areas, because they will have to pay attorneys to drive in from urban areas.

Representative Sveen said he is a strong supporter of keeping the clerk of court system as it is.

At the request of Chairman Stenehjem, Mr. Gabe Hermes, Owner, Richland Abstract Company, presented testimony to the committee. He said there is an abstractor in every county except two counties. He said clerks of court have personal knowledge of the people in the records. He said this makes an abstract search easier. He said if there is a combination of clerks of court, there is an issue as to the place of filing for a judgment. He said presently, property records, tax records, and court records are all in one place. He said this makes it easier to conduct a search.

In response to a question from Senator Traynor, Mr. Hermes said a judgment in one county may be transcribed in another. He said if there is a combined office, there is an issue as to when the judgment is effective. He said a judgment is effective at the time it is docketed in the county of origin and is effective on the date it is transcribed in other counties.

In response to a question from Senator Traynor, Senator Stenehjem said the Supreme Court is required to submit a plan for a state system of clerks of court.

At the request of Chairman Stenehjem, Mr. Keith Nelson, Supreme Court Administrator, presented testimony to the committee. He said the Supreme Court is proceeding with its plan to have a state system of clerks of court. He said a study to determine the need for clerks of court has been completed by a third party. He said the Supreme Court is in the process of determining the cost of providing clerks of court. He said some of the issues in determining the assumptions for the budget include the number of offices and clerks, the amount of supervision required, and for providing replacement clerks in times of illness. He said the study increases some and decreases some clerks of court positions in certain offices. He said the next step is to determine the pay grade.

In response to a question from Representative Meyer, Mr. Nelson said if a clerk of court does not have at least 600 filings, they are not necessarily going to be consolidated with another office. He said the study excludes all nonjudicial duties, including passports and collections.

In response to a question from Senator Watne, Mr. Nelson said the federal government would be able to issue passports if the clerks of court did not issue them.

In response to a question from Representative Meyer, Mr. Nelson said the Supreme Court study was an independent study. He said it was done by an

organization that has done studies in other states. He said some of the assumptions by this organization were not applicable to North Dakota, such as national pay grades.

Senator Traynor said the Supreme Court is compelled to complete the study and place the clerks of court in its budget. He said the Judiciary Committee does not have to do anything in regard to this issue.

Representative Dorso said the Judiciary Committee does not have to do anything. He said the intent of the Legislative Assembly was to build an efficient unified court system. He said no one ever said there could not be county clerks of court for nonjudicial functions. He said the counties have the authority to provide these other services. He said the plan is for the state to pay for judicial functions.

**It was moved by Representative Jensen, seconded by Senator Watne, and carried on a roll call vote that the Judiciary Committee request the chairman of the Legislative Council to enter an agreement with the Consensus Council to develop a plan that relates to the number of, the duties of, and budget for clerks of court.** Senators Stenehjelm, Nelson, Traynor, and Watne and Representatives Axtman, DeKrey, Delmore, Gunter, Hawken, Jensen, Kelsh, Kretschmar, Maragos, Meyer, Murphy, Nottestad, Stenehjelm, and Sveen voted "aye." No negative votes were cast.

### DISCRIMINATION IN NORTH DAKOTA STUDY

At the request of Chairman Stenehjelm, Ms. Amy Nelson, Executive Director, North Dakota Fair Housing Council, presented written testimony to the committee. She gave an overview of fair housing law. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Senator Stenehjelm, Ms. Nelson said the federal Department of Housing and Urban Development's process for a claim of discrimination may take two years. She said the Fair Housing Council referred 27 claims in 1995 and 22 in 1996 to the federal Department of Housing and Urban Development. She said she provides educational workshops on the federal Fair Housing Act. She said she investigates unfair housing. She said 80 percent of the funding for the North Dakota Fair Housing Council comes from a Housing and Urban Development grant.

In response to a question from Representative Hawken, Ms. Nelson said the grant is a community development block grant.

At the request of Chairman Stenehjelm, Senator Judy Lee said the federal law raises issues in advertising for using the words "executive," "family," "schools and parks," and "walk." She said the Fair Housing Council should spend more time educating landlords and publishers. She said punitive measures

should be taken by the Fair Housing Council only after they have used the process of advocating and educating.

In response to a question from Representative Hawken, Senator Lee said a person must be careful with the use of descriptive terms in the sale or rental of residential property. She said the rules have to be the same for everyone who applies for an apartment.

At the request of Chairman Stenehjelm, Mr. David Braton, Director of Publications, Davon Press, Inc., presented testimony to the committee. He said there had been a complaint filed against the *Midweek* for publishing advertisements that included the terms "mature tenant," "attention young professional," and "student." He said he never received a call before the complaint. He said he wished he had been notified and educated as to the impropriety of the use of these words. He said the complaint asked for a \$25,000 fine. He said he is trying to settle out of court with the Fair Housing Council. He said he has not received any educational materials from the Fair Housing Council. He said he presently checks every advertisement that goes into the *Midweek*.

Mr. Braton provided a handout of terms that are not acceptable under the federal Fair Housing Act. A copy of this handout is on file in the Legislative Council office.

At the request of Chairman Stenehjelm, Mr. Jack McDonald, North Dakota Newspaper Association, answered questions for the committee.

In response to a question from Representative Kretschmar, Mr. McDonald said the law allows a civil suit for damages. He said the law allows a public complaint to be filed by the Fair Housing Council. He said the Fair Housing Council is asking for \$25,000 in monetary damages, free seminars, and free advertisements. He said the complaint is filed in federal court.

In response to a question from Representative Delmore, Mr. McDonald said other newspapers are being investigated by the Fair Housing Council. He said the *Midweek* is the only newspaper he knows that has been sued by the Fair Housing Council.

In response to a question from Representative Hawken, Mr. McDonald said the lawsuit is not based on actual discrimination.

In response to a question from Representative Delmore, Mr. Braton said litigation may be why there has not been any educational services offered to him by the Fair Housing Council.

In response to a question from Senator Nelson, Mr. Braton said he thinks it is legal and proper for people to advertise for a certain sex roommate.

Ms. Nelson said she did not want to comment on the case. She said the person who placed the advertisement and the publisher are liable for discriminatory statements. She said the goal of a lawsuit is to get the publisher to stop running discriminatory advertisements.

In response to a question from Representative Delmore, Ms. Nelson said the Fair Housing Council holds public workshops. She said a complaint is filed with the Department of Housing and Urban Development before there is litigation.

In response to a question from Representative Nottestad, Mr. Braton said the federal Department of Housing and Urban Development had exhausted its two years to find grounds for discrimination.

In response to a question from Representative Maragos, Mr. Braton said the Fair Housing Council is a nongovernmental entity.

In response to a question from Representative Maragos, Mr. Braton said the federal Department of Housing and Urban Development would most likely say the advertisements the *Midweek* ran were discriminatory.

In response to a question from Representative DeKrey, Mr. Braton said the federal Department of Housing and Urban Development does not have control over the Fair Housing Council.

In response to a question from Representative Meyer, Mr. Braton said the Fair Housing Council is an advocacy group.

In response to a question from Representative Meyer, Mr. McDonald said the Fair Housing Council may file complaints like any private citizen. He said there is a two-year statute of limitations for a private lawsuit. He said the federal Department of Housing and Urban Development will usually discontinue any investigation upon the filing of a lawsuit. He said the Fair Housing Council receives grant money from the federal Department of Housing and Urban Development.

Senator Stenehjem said there is a possibility to designate a state agency to contract with the federal Department of Housing and Urban Development to perform investigations. He said this agency may be able to be the recipient of the grant which is received by the Fair Housing Council. He said having a local agency to investigate discriminatory housing is better than having it done by the federal government.

In response to a question from Senator Stenehjem, Mr. McDonald said the Fair Housing Council is a broad group with a local board. He said the present lawsuit is based on three advertisements.

In response to a question from Senator Traynor, Mr. McDonald said the *Midweek* will not be able to recover costs or attorneys' fees from the Fair Housing Council because the basis for their suit is not frivolous. He said the basis for their suit merely seems unfair.

Senator Stenehjem said there was a memo from the federal Department of Housing and Urban Development presented at a previous meeting that related to the grant. He said there was information on which changes need to be made in the North Dakota Human Rights Act for a state agency to be eligible to receive grants to investigate discriminatory housing.

Senator Stenehjem said it appears the Fair Housing Council does not do a very good job. He said state agencies appear to be more cooperative.

Representative Kelsh said if a state agency receives the grant that the Fair Housing Council receives, it may make the Fair Housing Council more aggressive with lawsuits so that they may fund their activities.

**It was moved by Representative Delmore, seconded by Representative Hawken, and carried on a voice vote that the Legislative Council staff be requested to prepare a bill draft for the next meeting which makes the changes in the Human Rights Act to allow a state agency to receive grants from the federal Department of Housing and Urban Development for the investigation of discriminatory housing.**

### **BILL DRAFT TO REMOVE YEAR 2000 REFERENCES**

At the request of Chairman Stenehjem, Legislative Council staff presented a bill draft that would make corrections for year 2000 references. He said all of the changes made appear in statutory forms. He said the most common change consists of overstriking the 19 in "19\_\_." He said additional cleanup was done to the language in these forms by removing antiquated language, gender specific language, and the use of the word "such."

**It was moved by Representative DeKrey, seconded by Representative Nottestad, and carried on a roll call vote that the bill draft relating to year 2000 references be approved and recommended to the Legislative Council.** Senators Stenehjem, Nelson, Traynor, and Watne and Representatives Axtman, DeKrey, Delmore, Gunter, Hawken, Jensen, Kelsh, Kretschmar, Maragos, Meyer, Murphy, Nottestad, Stenehjem, and Sveen voted "aye." No negative votes were cast.

### **UNIFORM LAWS STUDY**

At the request of Chairman Stenehjem, Mr. Paul T. Griffin, Supervisor, Guardianship Services Division, Catholic Family Services, presented written testimony to the committee. He said he is the president of the Guardianship Association of North Dakota. He said he is against the Uniform Guardianship and Protective Proceedings Act. He said the present law is satisfactory. A copy of his testimony is on file in the Legislative Council office. He provided handouts entitled *A Comprehensive Study of Guardianship Services in North Dakota* and *Partners in Guardianship*. A copy of these handouts is on file in the Legislative Council office.

At the request of Chairman Stenehjem, the committee received written testimony from District Court Judge Gail Hagerty on the Uniform Guardianship and Protective Proceedings Act. Her testimony

is in opposition to the Act. A copy of her testimony is on file in the Legislative Council office.

At the request of Chairman Stenehjem, the committee received written testimony from Mr. Grant H. Shaft, Attorney, Grand Forks, on the Uniform Guardianship and Protective Proceedings Act. His testimony is in opposition to the Act. A copy of his testimony is on file in the Legislative Council office.

### CONTINGENCY FEE ARRANGEMENTS

At the request of Chairman Stenehjem, Ms. Rosellen Sand, General Counsel, Attorney General's office, presented information on *State v. Hagerty*, *Billey v. North Dakota Stockmen's Association*, and other lawsuits substantially affecting this state. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Senator Stenehjem, Ms. Sand said the Attorney General's office does not look at the contracts that agencies have with attorneys to see if there are contingency agreements in the contracts. She said the Attorney General investigates the attorney to see if the attorney is qualified to serve as a special assistant attorney general. She said the Bank of North Dakota uses a collection agency to collect on defaulted student loans.

Senator Stenehjem said there is merit in restricting which cases contingency fees may be received by attorneys. He said in the *Hagerty* case the attorneys will receive millions of dollars in contingency fees. He said he sees this as an appropriation.

In response to a question from Senator Stenehjem, Ms. Sand said any limits on the use of the contingency fees should be constitutional. She said this means the entire legislature should make any decision relating to contingency fees. She said any approval process should be able to be done quickly and secretly. She said any disclosure to the other side would compromise the state's case.

In response to a question from Senator Traynor, Ms. Sand said North Dakota has not sued any tobacco companies. She said the state is involved in negotiations with tobacco companies. She said it is the Attorney General's opinion that the state should try to receive compensation from the tobacco companies because they have damaged the citizens of this state.

In response to a question from Representative Kretschmar, Ms. Sand said North Dakota is part of a group of states negotiating with tobacco companies.

In response to a question from Senator Traynor, Ms. Sand said Blue Cross Blue Shield was involved in the negotiations in Minnesota. She said she does not know if they are involved in the negotiations with this state.

In response to a question from Senator Watne, Ms. Sand said the decision to give the settlement,

from a lawsuit for price fixing, to the Commission on the Future of Agriculture was done because it was cost-prohibitive to distribute the settlement to individuals. She said the Attorney General determines who receives the money in a situation like the one stated previously. She said the money was given to the Commission on the Future of Agriculture because the lawsuit concerned farm chemicals.

In response to a question from Representative Kelsh, Ms. Sand said this state is not involved with any multistate litigation against Microsoft.

In response to a question from Senator Stenehjem, Ms. Sand said there is a reserve of \$1,018,000 for cases against the state.

In response to a question from Senator Stenehjem, Ms. Sand said it is not the Attorney General's place to suggest solutions to the *Billey* case.

In response to a question from the director, Ms. Sand said a continuing appropriation would work as a solution.

Representative Meyer said the cases of *Hagerty* and *Billey* are contrary to each other.

In response to a question from Representative Meyer, Ms. Sand said the involvement of a constitutional office in the *Hagerty* case made the difference in the cases.

In response to a question from Representative DeKrey, Ms. Sand said the issue as to whether money received by the Wheat Commission needs to be appropriated through the State Treasurer is based on whether it is public moneys.

In response to a question from Representative Axtman, Senator Stenehjem said the Department of Agriculture could contract with the Stockmen's Association to remedy *Billey*.

Representative Meyer said the Stockmen's Association provides brand registration at cost.

**It was moved by Representative Kretschmar, seconded by Representative Maragos, and carried on a voice vote that the Legislative Council staff be requested to draft a bill that requires legislative approval before the Attorney General enters into contingency fee arrangements.**

### SAFE DEPOSIT BOX ENTRY

Senator Traynor said last session the Legislative Assembly repealed a law relating to the acquisition of the contents of a safe deposit box after the death of an owner. He said under the old law a person could receive a petition from the clerk of court and have a bank officer aid in the inventory of the safe deposit box. He said after the repeal of the old law, there is a lack of uniformity in the procedure to gain entrance to a safe deposit box. He said he is required to have a special administrator appointed to enter a safe deposit box when there is no will. He said it is necessary to get into the safe deposit box to see if there is a will in the box. He said the court charges \$80 for the

appointment of a special administrator. He said the old system worked well.

Chairman Stenehjem recessed the meeting at 3:30 p.m.

### MEASURE NO. 1

Chairman Stenehjem called the meeting to order at 9:00 a.m. on Tuesday, August 18, 1998, at the Red River Valley Room, Student Center, State College of Science, Wahpeton.

Senator Stenehjem said the chairman of the Legislative Council assigned the Judiciary Committee the duty of holding public hearings on the constitutional measures to be on the ballot in public elections. He said it is not the purpose of the Judiciary Committee to take a public stand on the constitutional measures. He said the purpose of holding these hearings is to promote public discussion and debate and to create a public history.

At the request of Chairman Stenehjem, Representative William R. Devlin presented written testimony to the committee in opposition to measure No. 1. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator Traynor, Representative Devlin said if there is a vote on measure No. 1, which provides at least a 60 percent majority, it would most likely put this issue behind us. He said people are as divided as the legislature, and he thinks it will be a close vote.

In response to a question from Representative Kretschmar, Representative Devlin said if the "no" vote prevails, people will do what is right as it relates to increased funding for higher education. He said the recommendations in the Bush report could be followed without much money. He said the universities have become more flexible.

In response to a question from Senator Watne, Representative Devlin said he does not think the legislature is micromanaging higher education. He said he thinks the legislature expects certain results. He said the Board of Higher Education sometimes appears to be more interested in institutions than geographic regions.

In response to a question from Representative Maragos, Representative Devlin said he thinks the institutions of higher education have done an excellent job with the money they have received from the Legislative Assembly.

Representative Sveen said higher education is not overfunded by the Legislative Assembly. He said closing one, two, or three institutions will not save very much money or increase the quality of education at the other institutions. He said this conclusion was in the Bush report, and he agrees with it.

In response to a question from Representative Delmore, Representative Devlin said measure No. 1 might be perceived as a mandate to close institutions

of higher education; however, it does not necessarily have to be seen from that perspective.

At the request of Chairman Stenehjem, Representative Ole Aarsvold presented testimony to the committee. He said he is in opposition to measure No. 1. He said two of the six sponsors voted no against the resolution. He said there are no proponents for the measure speaking today. He said this says something about how much people are in favor of this measure. He said measure No. 1 is snake oil. He said it is touted to be a magical cure-all by saving money, making institutions more responsive, forcing administration and faculty to become more innovative, making institutions leaner and meaner, giving the Board of Higher Education more latitude, and, at the least, deciding this controversial issue. He said others say the institutions have flexibility and are responsive and innovative. He said the real intent and purpose of measure No. 1 is to ask the people of North Dakota to give up their constitutional protection that requires educational decisions to be made on an institution-by-institution basis. He said the measure would give an unelected board unnecessary control. He said this is a dangerous direction for a constitutional government.

In response to a question from Senator Stenehjem, Representative Aarsvold said his district has supported tax measures for educational needs. He said measure No. 1 is a concern in his district.

At the request of Chairman Stenehjem, Ms. Cynthia Kaldor, former member, Board of Higher Education, presented testimony in opposition to the measure. She said the Board of Higher Education has encouraged entrepreneurial endeavors and outside funding and cooperation among institutions. She said there is flexibility in the system. She said the Governor and the legislature have stifled change more than the constitution.

Ms. Kaldor said the legislature should allow the institutions of higher education to carry over funds from biennium to biennium and keep money they make. She said the changes in the Bush report can be made regardless of any constitutional change. She said if the measure were to pass it would provide unnecessary power to the Board of Higher Education.

In response to a question from Senator Watne, Ms. Kaldor said the Board of Higher Education should not close any campuses. She said the people of North Dakota should make that decision.

In response to a question from Senator Watne, Ms. Kaldor said the Board of Higher Education does not need any more power to be flexible.

In response to a question from Senator Nelson, Ms. Kaldor said the Board of Higher Education did vote on this issue. She said she thought the vote was on whether to send the issue to the people. She said the vote was affirmative.

In response to a question from Representative Maragos, Ms. Kaldor said some on the board thought the vote was on the merits of the measure.

In response to a question from Senator Traynor, Ms. Kaldor said all of the institutions of higher education are needed for education to be accessible.

At the request of Chairman Stenehjem, Mr. Tom Moe, Attorney, Mayville, presented testimony to the committee. He said he strongly encourages a "no" vote. He said this is not a partisan issue. He said the protections for institutions have been in the constitution for 100 plus years. He said the protections were placed in the constitution to address concerns about institutions being moved on a political whim. He said this measure takes power away from the people and places it with an unelected board. He said this measure offers confusion, not flexibility.

In response to a question from Representative Kretschmar, Mr. Moe said his main concern is for large universities where money can be cut. He said he is also concerned with the removal of small institutions.

Representative DeKrey said expenditures on small institutions provide better results than expenditures on large institutions. He said the small institutions should not fear closure.

In response to a question from Representative DeKrey, Mr. Moe said the constitutional protection prevents misguided theories and keeps the power with the people.

At the request of Chairman Stenehjem, Mr. William Heigaard presented written testimony to the committee. He is in opposition to the passage of measure No. 1. A copy of his testimony is on file in the Legislative Council office. He provided a letter from Mr. Bryce Streibel written in opposition to measure No. 1. A copy of this letter is on file in the Legislative Council office.

In response to a question from Representative Maragos, Mr. Heigaard said the issue that has the most concern of the citizens in his area is the farm economy. He said in the past and present, people in his area have wanted access to the University System. He said the University System has flexibility and has done it without changing the constitution.

In response to a question from Representative DeKrey, Mr. Heigaard said the measure will take the power away from the people and will give the legislature and the board a free hand in closing institutions. He said people should not be required to use initiated measures and the referendum. He said the decision should be with the people.

At the request of Chairman Stenehjem, Senator Larry J. Robinson provided testimony for the committee. Senator Robinson said he is opposed to measure No. 1. He said he agrees with the previous speakers. He said the University System is a tremendous asset and is a solution to this state's economic problems, not the problem. He said the problem may

be a system that is not expanding fast enough. He said we should have the courage to change higher education for the better, not the constitution. He said passing the measure would be passing the ball by the legislature to the Board of Higher Education on the issue of institutions and their missions. He said the University System is not as risky an investment as some of the economic development packages given to other industries. He said the University System brings people into this state. He said the products of the University System make this state a better place to live. He said the University System is a successful system that should not be fundamentally changed.

In response to a question from Senator Traynor, Senator Robinson said both of the institutions at Valley City and Mayville have received highly successful reviews. He said one review said they are a model for others to emulate.

In response to a question from Representative Kretschmar, Senator Robinson said the Board of Higher Education will have the same problem the legislature has had if the measure prevails. He said the passage of the measure would send a message of uncertainty to the staff at the institutions. He said it would make it difficult to recruit staff. He said it appears some people in this state are slow to recognize success and quick to see mistakes.

In response to a question from Representative Axtman, Senator Robinson said he thinks the Legislative Assembly should explore having students come in from other states to fill any extra space in some programs. He said millions of dollars are picked up with the exchange of students with Minnesota.

In response to a question from Representative Nottestad, Senator Robinson said students in the University System are getting older. He said declining enrollment in primary and secondary schools does not mean a declining enrollment in higher education. He said higher education is an asset that should be utilized and expanded.

At the request of Chairman Stenehjem, Senator Russell T. Thane presented testimony to the committee. He said the system is working well and is evolving for the better. He sees little reason to remove the references in the constitution. He said he opposed the concurrent resolution in the Senate because people might be uninformed and think that this constitutional amendment will be a quick fix.

At the request of Chairman Stenehjem, the committee received written testimony from Mr. John Freije, Mayor, Mayville, in opposition to measure No. 1. A copy of his testimony is on file in the Legislative Council office.

At the request of Chairman Stenehjem, Mr. Larry Isaak, Chancellor, North Dakota University System, provided testimony for the committee. He said it is a myth that all the University System does is educate people to leave the state. He said in 1995, 61 percent

of North Dakotans using the University System remained in the state.

Mr. Isaak said in 1995, 25 to 30 percent of residents from other states remained in this state after graduation from the University System.

In response to a question from Representative Kretschmar, Mr. Isaak said the University System wants funding for the tracking of students from high school through college.

In response to a question from Representative Nottestad, Mr. Isaak said the choice is to educate the children of this state and provide them with a choice as to whether to stay in this state or keep them here uneducated.

In response to a question from Senator Watne, Mr. Isaak said having a medical school in this state relates to the public policy question of what level of medical services should there be in this state. He said 50 to 60 percent of the physicians in North Dakota have attended the University of North Dakota School of Medicine and Health Sciences.

In response to a question from Representative Jensen, Mr. Isaak said every student has an impact of \$10,000 per year on the community in which that student lives.

In response to a question from Senator Traynor, Mr. Isaak said he does not know if the Board of Higher Education is going to take a position on measure No. 1. He said the issue will be discussed at the next meeting.

In response to a question from Senator Stenehjem, Mr. Isaak said his understanding of the previous motion by the Board of Higher Education

was to support the Bush recommendation to place measure No. 1 on the ballot.

In response to a question from Senator Nelson, Mr. Isaak said the University System wants to track students as they transfer between institutions, private, public, and tribal. He said present data does not take into account the transfer of students to other institutions.

In response to a question from Senator Watne, Mr. Isaak said he knows of three communities that offer direct grants for higher education as a means of economic development. He said the University System is the research and development department for business in this state.

In response to a question from Representative Maragos, Mr. Isaak said a good business will try to spread marginal and fixed costs over more customers.

Chairman Stenehjem adjourned the meeting at 11:30 a.m.

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Timothy J. Dawson  
Committee Counsel

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John D. Olsrud  
Director

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