

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### JUDICIARY COMMITTEE

Monday and Tuesday, October 27-28, 1997  
Brynhild Haugland Room, State Capitol  
Bismarck, North Dakota

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

**Members present:** Senators Wayne Stenehjem, Marv Mutzenberger, Carolyn Nelson, 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

**Member absent:** Representative Roxanne Jensen

**Others present:** See Appendix A

Chairman Stenehjem asked the committee to observe a few moments of silence in memory of Senator James Berg, who died on September 20, 1997. Chairman Stenehjem said Senator Carolyn Nelson will be filling the vacant position on the committee.

#### APPROVAL OF MINUTES

**It was moved by Representative Kretschmar, seconded by Representative Maragos, and carried on a voice vote that the minutes of the July 17, 1997, meeting be approved as mailed.**

#### COURT UNIFICATION STUDY

Chairman Stenehjem called on Chief Justice Gerald W. VandeWalle, Supreme Court, for comments concerning the court unification and funding of clerk of court study. Chief Justice VandeWalle said the court study being conducted by the National Center for State Courts is nearing completion. He said the national center will be making a report to the Judiciary Committee at its January 12, 1998, meeting. He said the clerk of court study is also under way and is in the data gathering stage. Six counties, he said, have applied under the provisions of 1997 Senate Bill No. 2002 to have the state assume their clerk of court costs. He said those counties are Mercer, Barnes, Cass, Ransom, Burleigh, and Stark. His understanding of the 1997 legislation, he said, is

that because the counties are directed to combine or share the services of the clerks of court, it is not contemplated that the state will take over all 53 clerk of court offices. He said if more counties do not apply to have the state take over their clerk of court duties, the judiciary may propose to the next Legislative Assembly that the counties have more options than those found in the 1997 legislation.

In response to a question from Representative Kretschmar, Chief Justice VandeWalle said \$11 million per biennium is a rough estimate of the cost for the state to take over the clerk of court offices without any changes. He said this estimate was based on the salaries being paid by the counties.

In response to a question from Senator Stenehjem, Chief Justice VandeWalle said the study being conducted by the National Center for State Courts includes a comparison of salaries of clerks of court, which vary from county to county. He said when the clerks are on the state payroll the salaries will more accurately reflect the idea of "equal pay for equal work." He said in some cases salaries will be frozen for a time and in other cases salaries will be increased.

Chairman Stenehjem called on Ms. Kay Newell Braget, Clerk of District Court, Pembina County, for comments concerning this study. Ms. Braget provided written testimony regarding the state funding of clerks of court and the estimated 1998 budgets of each county's clerk of court office. A copy of Ms. Braget's testimony is attached as Appendix B.

In response to a question from Representative Kretschmar, Ms. Braget said Griggs County, which has a population of less than 6,000 persons, had a separate register of deeds and clerk of court office but has decided to combine the offices. She said she is unaware of any counties with combined offices which have decided to split the position into two offices.

In response to a question from Senator Traynor, Ms. Braget said there may be other

opportunities for counties to generate revenue by assessing fees for certain additional services of the court that are now considered to be part of the original filing fee.

### CHARITABLE GAMING STUDY

Chairman Stenehjem called on Ms. Sheila Heil, Gaming Manager, Fort Abraham Lincoln Foundation, for testimony concerning the cost of setting up a typical gaming site by the foundation. Ms. Heil provided a written itemized list that contains the costs for setting up a one-table blackjack site, a copy of which is on file in the Legislative Council office. She said the estimated cost of \$8,104 does not include the ongoing cost of site rent. She said the greatest expense of setting up a blackjack site is the cost of video surveillance equipment.

In response to a question from Representative Sveen, Ms. Heil said it takes approximately one and one-half to two years to recoup the cost of setting up a new site.

In response to a question from Representative Kretschmar, Ms. Heil said gaming has been going well for the Fort Abraham Lincoln Foundation. She said there was a decrease in proceeds when the Prairie Knights Casino first opened in 1994, but that the level of gaming has rebounded. She said the higher bet limits at the tribal casinos have attracted some of those persons who previously played the charitable games. She said with the exception of an incident at a Bottineau site, there have been few problems with employee theft and cheating.

In response to a question from Representative Maragos, Ms. Heil said most of the foundation sites are in the Bismarck-Mandan area. She said the exception is a site at a bar in Bottineau which is owned by a local bar owner.

Chairman Stenehjem called on Mr. Peter Ressler, American Foundation for Wildlife, for comments regarding the cost of setting up a gaming site. Mr. Ressler provided a written statement that itemized the costs involved in setting up a site with a pull tab machine, pull tab jars, blackjack tables, and bingo. A copy of Mr. Ressler's statement is on file in the Legislative Council office.

In response to a question from Representative Maragos, Mr. Ressler said the American Foundation for Wildlife has several sites that require the use of video surveillance equipment. He said the equipment is required at a site that has \$10,000 or more in gross proceeds for two consecutive quarters. He said many of the smaller sites only conduct blackjack on weekends and therefore do

not generate enough gross proceeds to require the video equipment.

In response to a question from Senator Nelson, Mr. Ressler said the American Foundation for Wildlife has 25 sites, the maximum allowed by state law. He said the sites are spread throughout the state.

In response to a question from Representative Sveen, Mr. Ressler said the sites with pull tab machines are the most profitable. He said it is more difficult to make a profit on blackjack.

In response to a question from Representative Maragos, Mr. Ressler said the amount of bingo prizes is usually set by the organization. He said not all bingo sites are run the same way and that prizes and types of games vary depending on community preferences. He said his bingo organization has not received pressure to increase the bingo prizes at its bingo site in Minot.

In response to a question from Representative Sveen, Mr. Ressler said when an organization loses money due to theft, the Gaming Division has a policy that allows for the waiver of the amount of tax due on the proceeds if the organization can provide proper documentation, such as police reports and accounting records.

Chairman Stenehjem called on Mr. Rick Stenseth, Fargo-Moorhead Community Theater, for comments concerning the costs to an organization to begin operations at a gaming site. Mr. Stenseth provided a written itemized statement of the cost of a site with four blackjack tables, a jar bar, and bar bingo. A copy of his statement is on file in the Legislative Council office.

In response to a question from Representative Kretschmar, Mr. Stenseth said depending on the site, it can take anywhere from six to eight months to over a year for a site to recoup startup costs. He said the sites operated by the Fargo-Moorhead Community Theater have seen a decrease in gaming proceeds since the opening of the new tribal casino near Hankinson.

In response to a question from Senator Stenehjem, Mr. Stenseth said the use of video surveillance has served as a deterrent to cheating, especially for the smaller organizations that have fewer persons available to supervise the tables. He said, however, the use of the video surveillance equipment has not lived up to the expense.

Chairman Stenehjem called on Mr. Keith Lauer, Gaming Division, Attorney General's office, for the presentation of gaming information that was requested by the committee. Mr. Lauer distributed and reviewed a packet of information regarding charitable gaming. A copy of the information is on file in the Legislative Council office. The packet contained the following information:

- Number of organizations, licenses, and sites for the years 1985 through 1997.
- Forecasted gaming activity for the 1997-99 biennium.
- Overview of gaming activity for 1977-97.
- Eligible use contributions for the fiscal year ended June 30, 1997.
- North Dakota gaming-related taxes.
- Number of newly licensed organizations and organizations that did not renew licenses for the years 1986 through 1997.
- Organizations that discontinued gaming during the period July 1, 1992-June 30, 1997, and the reasons.
- Summary of gaming activity for the fiscal year ending June 30, 1997.
- Analysis of gaming expenses - Fiscal year ending June 30, 1997.
- Overview of gaming organizations' under and excess expenses for the fiscal year ended June 30, 1997.
- Organizations with a negative imbalance in their gaming and/or trust accounts for the fiscal year ended June 30, 1997.
- Organizations that discontinued gaming during the period April 1, 1977-June 30, 1997, and have a remaining balance of net proceeds not disbursed to eligible uses.
- Copy of a letter from Great Plains Assistance Dogs Foundation.

Mr. Lauer also distributed to the committee a copy of the publication *Charitable Gaming in North America--1996 Report*. A copy of the publication is on file in the Legislative Council office.

In response to a question from Representative Axtman, Mr. Lauer said according to the 1996 report, the average per capita amount wagered in the state was \$447. He said this is the highest per capita amount among the states that allow some form of charitable gaming. He said North Dakota is also among the highest in payout percentage which may be a reason for the high amount of per capita wagering.

In response to a question from Representative Meyer, Mr. Lauer said the payout percentage is set by each organization.

In response to a question from Representative Sveen, Mr. Lauer said although charitable gaming has evolved into an industry that was not envisioned 20 years ago, a great deal of money has been given to worthwhile causes as a result of the gaming.

In response to a question from Senator Watne, Mr. Lauer estimated 5,000 to 6,000 persons are employed by the charitable gaming industry in the state.

In response to a question from Senator Redlin, Mr. Stenseth said the wages of gaming employees range from \$4.25 to \$10 per hour plus tips. He said full-time employees receive health insurance and vacation benefits. Ms. Heil said the wages in her organization range from \$4.25 to \$7 per hour plus tips. She said no fringe benefits are offered.

In response to a question from Senator Stenehjem, Mr. Lauer said the use of video surveillance equipment has not been as effective as originally hoped. He said organizations are only required to view one hour of tape per table per week. He said while the use of video surveillance equipment has been a deterrent to theft and cheating, there have not been enough prosecutions to make it worthwhile.

Chairman Stenehjem called on Mr. Chuck Keller, Gaming Division, Attorney General's office, for comments concerning the charitable gaming information. Mr. Keller reviewed and discussed the information contained in the packet of information provided to the committee.

In response to a question from Representative Sveen, Mr. Keller said an organization is not restricted on the way it uses its under expense amount. He said most organizations use the under expense amount for general operating expenses of the organization.

In response to a question from Senator Redlin, Mr. Keller said if an organization has excess expenses and does not have an outside source of funds, such as dues, the amount distributed to the charity is reduced.

In response to a question from Senator Stenehjem, Mr. Keller said the Attorney General's office is not aggressively pursuing organizations that have a remaining balance of net proceeds not disbursed to eligible uses.

In response to a question from Representative Maragos, Mr. Keller said organizations are not required to report how it spends its under expense amount.

In response to a question from Senator Traynor, Mr. Keller said he is not aware of a statute of limitations on the collection of the remaining balance of net proceeds not disbursed to eligible uses. He said the amounts are kept on the books in order to continue collection attempts and to keep the organizations from being relicensed. He said legislation is probably not necessary to clear those amounts off the books because the Attorney General has that authority.

In response to a question from Senator Watne, Mr. Keller said a number of charitable organizations receive state grant funds. He said some organizations may be using the grant funds to offset excess expenses.

In response to a question from Representative Maragos, Mr. Keller said the Gaming Division has a procedure for organizations that have an expense imbalance at the end of a quarter. He said the Gaming Division requests documentation from the organization to settle the imbalance. He said followup letters are sent to the organization to resolve the matter.

Chairman Stenehjem called on Mr. John Sagsveen, North Dakota Bowling Proprietors, for comments concerning the charitable gaming study. Mr. Sagsveen said in light of increases in taxes, wages, and utilities over the past several years, his organization would like the committee to consider increasing the amount of rent charities pay to the owners of the gaming sites.

Chairman Stenehjem called on Mr. Steve Carver, Gymagic Gymnastics, Inc., Minot, for comments concerning the charitable gaming study. Mr. Carver submitted prepared testimony regarding a charitable gaming issue in Minot which has resulted in negative competitiveness among bar establishments and gaming organizations. A copy of Mr. Carver's testimony is attached as Appendix C. He said several situations have arisen in Minot whereby bar establishments have required organizations to have certain levels of prize payout for bar bingo.

In response to a question from Representative Meyer, Mr. Carver said most organizations have a one-year lease for site rentals.

In response to a question from Senator Watne, Mr. Carver said some sites are requiring the organizations to offer bingo prizes at a level the organization is unable to afford. As a result, he said, the organization is forced to give up this site to another organization that is able to offer the higher prizes.

Representative Maragos said some organizations have other sources of income they are able to use for prize payouts. He said bingo is the only charitable game in which the maximum prize is not regulated and the issue may need to be studied further.

In response to a question from Representative Kretschmar, Mr. Stenseth said to improve the charitable gaming industry, he would like to see a review of the video surveillance requirements, the bingo rules, and the rules for poker and paddlewheels. He said the poker and paddlewheel rules are being reviewed by the State Gaming Commission.

In response to a question from Representative Maragos, Mr. Stenseth said the Charitable Gaming Association of North Dakota will be presenting a number of desired changes to the committee at a future meeting.

## DISCRIMINATION IN NORTH DAKOTA STUDY

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 and the September 24, 1997, meeting of the North Dakota Advisory Committee. Ms. Barrett said the North Dakota Advisory Committee is composed of 13 North Dakota citizens. She said the appointments to the advisory committee reflect a balance of gender, race, and political and religious affiliation. The committee, she said, meets two to three times per year to study civil rights issues, including the issue of whether a need exists to establish a human rights commission in North Dakota. She said the committee has conducted two factfinding hearings. The first hearing, she said, was held in Bismarck in May 1996, and the second was held in Fargo on September 24, 1997. At those hearings, she said, a broad cross section of people testified, including representatives of local and state government agencies; human service-type agencies; elected officials; agencies representing immigrant, migrant, and handicapped populations; and agencies that deal with housing and emergency services. She said a number of people with personal experiences of discrimination also testified at the hearings. She said transcripts of the factfinding hearings are available upon request.

Ms. Barrett said the majority of the testimony received by the committee at the hearings dealt with the areas of job discrimination and rental housing discrimination. Regarding rental housing, she said, most of the discrimination tends to be directed at single women with children and at handicapped persons. Another major issue addressed in the testimony heard by the committee, she said, was the lack of mediation, conciliation, and referral services to address complaints. She said a common complaint heard by the committee was that people with discrimination claims become lost in the system and do not know where to go for assistance. She said one point made over and over was that people accept discrimination as the status quo because they have no other recourse. She said human rights issues are real and they exist in North Dakota. She said most people do not have the money to pursue the legal remedies that are available to them under state law.

Ms. Barrett said there is a need for the collection of hard data to determine the level of discrimination in the state. She said the city of

Grand Forks has collected some statistics and information over the past several years through the Grand Forks Office of Community Relations. She said some respect should be given to studies that have already been conducted, including the two factfinding hearings of the North Dakota Advisory Committee. She said there seems to be some problems with documenting discrimination issues brought before the State Department of Labor. She said the Department of Labor has found no probable cause for discrimination for the past two years; however, when the claims were further pursued at the federal level, probable cause was found.

In response to a question from Representative Meyer, Ms. Barrett said the Department of Labor only handles complaints relating to employment. All other types of complaints, she said, must be handled at the federal level.

In response to a question from Senator Traynor, Ms. Barrett said she is not aware of the number of civil rights cases being litigated in the state district courts. Senator Traynor said the information may be available through the State Court Administrator's Office.

In response to a question from Representative Delmore, Ms. Barrett said the transcripts and a summary of the hearings could be made available if that information is specifically requested by the committee.

Chairman Stenehjem called on Mr. John Olson, Attorney, Bismarck, for comments concerning the discrimination study. Mr. Olson said he has been a member of the North Dakota Advisory Committee to the United States Commission on Civil Rights for six years. He said the hearings of the advisory committee have been long and thorough and that the conclusion of the committee is that there is discrimination in North Dakota. He said North Dakota is one of only a few states that does not have a centralized human rights commission to address discrimination concerns.

Mr. Olson said although North Dakota is not growing in terms of population, it is growing in terms of diversity. He said this is especially evident in the elderly and disabled population. He said there are two areas of concern regarding discrimination in North Dakota. First, he said, there is an "attitudinal" discrimination that is covert and aversive. The remedy for this type of discrimination, he said, is education. He said children need to be taught to respect the differences in people. Second, he said, is the lack of resources for enforcement. While there are a number of agencies and offices that address various areas of discrimination, he said, there is no single agency to address the entire issue. He

said something needs to be done to address the problem and it should be done through the legislative process.

Mr. Olson said the use of mediation is one way to address some of the discrimination issues in the state. He said Grand Forks is the only city in the state using this process to handle disputes, discrimination as well as other types of disputes. In addition to mediation, he said, there are a number of other efforts that can be made to address the discrimination issue. He said these efforts could include:

- Education;
- Coordinate information on a statewide basis;
- Use of resources including attorneys, volunteers, and grants;
- Establish a method to identify discriminations; and
- Establish a means for resolution of complaints and make sure the remedies are available to those who need them.

Mr. Olson said one option may be for the Legislative Assembly to fund and establish a small office that would coordinate these efforts. He said the office should include a nonpartisan advisory commission that would take on a nonbiased approach to resolving discrimination issues.

In response to a question from Representative Nottestad, Mr. Olson said as a way to educate persons on discrimination, the schools could find ways to communicate the information to students, teachers, and parents.

In response to a question from Senator Watne, Mr. Olson said it would be easier for persons with complaints if those complaints could be addressed at the state rather than the federal level.

In response to a question from Senator Traynor, Mr. Olson said a lack of understanding and communication is often as big a problem as the discrimination itself.

In response to a question from Senator Stenehjem, Mr. Olson said the laws North Dakota has regarding discrimination are sufficient, but in practicality they are ineffective because people do not have the resources to seek the available remedies.

Vice Chairman Kretschmar called on Mr. Larry Spain, Director, Legal Aid Association, Grand Forks, for comments concerning the study. He said the clinical program at the University of North Dakota School of Law uses second- and third-year law students to provide legal services on civil cases to persons who cannot afford to hire

an attorney. He said it has been difficult to get a handle on the extent of discrimination in North Dakota because there is no one single agency available to handle the complaints. He said the clients of the clinical program are all poor and come from various backgrounds and many are not educated on their rights. He said of the 1,500 clients served each year by the program, about 100 involve some aspect of discrimination. He said most of the discrimination complaints involve housing.

Mr. Spain said the state has a policy to prohibit discrimination; however, enforcement of that policy is up to the individual. He said because of the cuts in funding for legal services, it has been difficult to provide access to legal services, especially for persons in rural areas. He said it is difficult to expect private attorneys to take civil rights cases. He said the cases require significant effort to investigate and handle. He said the possibility of being awarded attorneys' fees is not enough incentive for attorneys to take on these cases.

Mr. Spain said it is difficult for individuals to seek remedies through private means. He said persons often must go out of state to federal agencies to pursue complaints. He said North Dakota people want a local agency to investigate and evaluate their complaints.

In response to a question from Senator Watne, Mr. Spain said the Conflict Resolution Center in Grand Forks provides mediation services within the community. He said the center also makes referrals to Legal Aid.

In response to a question from Representative Kretschmar, Mr. Spain said Legal Aid does not have any discrimination cases being litigated in the district courts. He said Legal Aid is often precluded from taking cases in which damages could be awarded.

Vice Chairman Kretschmar called on Ms. Sandi Tabor, Executive Director, State Bar Association, for comments concerning the findings of the Commission on Gender Fairness in the Courts. Ms. Tabor provided written testimony concerning the findings of the gender fairness commission, a copy of which is attached as Appendix D.

In response to a question from Representative Meyer, Ms. Tabor said an attorney's use of gender to take advantage of a legal situation is more likely to be a case of unethical behavior rather than gender-biased behavior.

In response to a question from Representative Kelsh, Ms. Tabor said gender bias is a component of discrimination. She said a human rights commission may be a mechanism to address sexual harassment issues.

In response to a question from Senator Traynor, Ms. Tabor said approximately 240 of the 1,300 licensed attorneys in North Dakota and close to 50 percent of Law School classes at the University of North Dakota School of Law are female.

In response to a question from Senator Watne, Ms. Tabor said the North Dakota laws regarding discrimination are adequate but are not being enforced. She said alternative dispute resolution works in some situations, but many times it is not appropriate because of an imbalance of power between the parties.

In response to a question from Representative Kretschmar, Ms. Tabor said the volunteer lawyer program receives calls regarding discrimination. She said few attorneys are willing to take discrimination cases.

Vice Chairman Kretschmar called on Mr. Frankie Kartch, Executive Director, North Dakota Small Business Survival Committee, for comments concerning the need for a human rights commission. Mr. Kartch submitted written testimony, a copy of which is attached as Appendix E.

In response to a question from Representative Delmore, Mr. Kartch said a human rights commission would be another government entity that would affect small business.

In response to a question from Senator Nelson, Mr. Kartch said the Small Business Survival Committee has been in existence since March 1997 and has approximately 200 members.

In response to a question from Representative Nottestad, Mr. Kartch said small business is already overregulated and a human rights commission would create more government regulation of small business.

In response to a question from Representative Kelsh, Mr. Kartch said his organization supports fewer rules and less regulation for small business. He said it is important to protect the free market from the reaches of government.

Vice Chairman Kretschmar requested that a copy of a letter from Mr. David Dammen be distributed to the committee. He said Mr. Dammen was unable to attend the meeting. A copy of Mr. Dammen's letter is attached as Appendix F.

Vice Chairman Kretschmar called on Ms. Deborah Painte, Executive Director, Indian Affairs Commission, for comments concerning the discrimination study. Ms. Painte said her testimony also represented the Governor's position. She submitted written testimony regarding the creation of a human rights commission, a copy of which is attached as Appendix G. Ms. Painte's

written testimony also includes a statement submitted to her by Ms. Eve Benson regarding an incident that occurred on October 11, 1997.

In response to a question from Senator Traynor, Ms. Painte said most of the complaints received in her office are employment-related and are referred to the Department of Labor. She said housing complaints are referred to the North Dakota Fair Housing Council. She said a number of complaints are received regarding the disparate treatment of American Indians by retailers, the service industry, and in other business transactions.

In response to a question from Representative Meyer, Ms. Painte said a small "one-stop shop" could be established as a single place in state government for persons with complaints to seek redress. She said it could be a source for getting information to the victims.

In response to a question from Representative Delmore, Ms. Painte said the proposed "one-stop shop" would not be as expensive as a human rights commission. She said this type of clearinghouse would at least provide an estimate of the number of incidents of discrimination that occur in the state.

Vice Chairman Kretschmar called on Senator Donna Nalewaja for comments concerning the discrimination study. Senator Nalewaja said discrimination is a serious issue in the state. She said because North Dakota does not have a human rights commission does not mean discrimination does not exist in the state. She said the state needs to start somewhere and perhaps a clearinghouse or "one-stop shop" is the first step that could be taken to help address the issue. She said the committee should look at the human rights commissions of similarly situated states, such as South Dakota and Montana.

Senator Nalewaja said as a real estate agent, she is very cognizant of discrimination concerns. She said agents are required to take discrimination awareness courses.

In response to a question from Senator Watne, Senator Nalewaja said the Attorney General's office has no role in the investigation or enforcement of discrimination issues. She said the Attorney General can only refer persons to other state or federal agencies. She said she is not sure if the Attorney General's office would be the appropriate place to locate the proposed clearinghouse. She said it appears that the Governor would like to see the office housed in the executive branch.

Vice Chairman Kretschmar requested that the submitted written testimony of Mr. Russell D. Mason, Sr., Chairman, Three Affiliated Tribes, and

the testimony of Mr. David Gipp, President, United Tribes Technical College, be distributed. Vice Chairman Kretschmar said Mr. Mason and Mr. Gipp were unable to attend the meeting. A copy of the testimony of Mr. Mason and Mr. Gipp is attached as Appendices H and I.

Vice Chairman Kretschmar called on Ms. Joy Johnston, Greater North Dakota Association, for comments concerning the need for a human rights commission in the state. Ms. Johnston submitted written testimony, a copy of which is attached as Appendix J.

In response to a question from Representative Delmore, Ms. Johnston said the proposed idea of a clearinghouse as an alternative to a human rights commission may be a more acceptable alternative and would be more fiscally responsible.

In response to a question from Senator Traynor, Ms. Johnston said the Greater North Dakota Association opposed the 1997 bill to create a human rights commission because the bill gave the investigating, decisionmaking, and enforcement authority to one agency.

In response to a question from Representative Nottestad, Ms. Johnston said North Dakota law allows for the recovery of attorneys' fees for human rights violations.

In response to a question from Representative Meyer, Ms. Johnston said the Greater North Dakota Association would consider working with the State Bar Association to encourage attorneys to do more pro bono work in the area of discrimination.

In response to a question from Representative Maragos, Ms. Johnston said although persons may not be able to afford an attorney, many attorneys are willing to take cases on a contingency fee basis.

Vice Chairman Kretschmar called on Ms. Sue Fifield, North Dakota Fair Housing Council, for comments concerning the discrimination study. Ms. Fifield said in 1995 the North Dakota Fair Housing Council received 350 allegations of housing discrimination. She said the majority of the housing complaints received by the office deal with race discrimination. She said the second highest number of complaints involve the exclusion of children in rental housing. She said this month the North Dakota Fair Housing Council has received 45 calls and inquiries regarding housing discrimination.

Ms. Fifield said the creation of a human rights commission would allow for local investigation of complaints. She said a commission would allow for both parties to get together to discuss the issue. She said in many cases the discrimination

is not intentional and the personal contact between the parties could result in the resolution of the problem. She said the use of litigation to resolve discrimination issues is a lengthy process that can take many years. She said investigators at the local level would get to know the community and the state. She said the federal Housing and Urban Development office is understaffed and is not easily accessible to North Dakota residents. She said most Housing and Urban Development complaints take one to two years to resolve.

Ms. Fifield said the North Dakota Fair Housing Council has received a two-year grant to continue operations in North Dakota. She said the council has no authority to enforce housing discrimination laws. She said the council is only authorized to do limited investigations to confirm if discrimination did or did not occur.

In response to a question from Representative Kretschmar, Ms. Fifield said the Montana Human Rights Commission, which has been in existence since 1979, was originally set up as a separate entity so it would not be influenced by outside agencies. She said the Montana Legislature recently passed a law that would make the commission a division of the Montana Department of Labor.

In response to a question from Senator Watne, Ms. Fifield said the North Dakota Fair Housing Council uses testers to gather information when a complaint has been made.

In response to a question from Representative DeKrey, Ms. Fifield said the Fargo office of the North Dakota Fair Housing Council has been closed; however, a new grant has been received to keep the Bismarck office open and to expand the area covered by that office. She said Montana subcontracts with North Dakota to do investigations and to conduct workshops.

In response to a question from Representative Delmore, Ms. Fifield said the Montana Human Rights Commission can assess damages and fines and can recover the cost of investigation. She said in order for a person to collect punitive damages, the case must go to court.

In response to a question from Senator Traynor, Ms. Fifield said there are only a few exceptions where a landlord can refuse to rent to families with children.

Vice Chairman Kretschmar called on Ms. Betty Mills, North Dakota Advisory Committee to the United States Commission on Civil Rights, for comments concerning the discrimination study. Ms. Mills said the September 24, 1997, meeting of the advisory committee in Fargo focused on the topic of discrimination and the need for a human rights commission in North Dakota. She said

North Dakota has adequate laws regarding discrimination; however, the laws do not help the average person who is unable to afford an attorney. She said the advisory committee is willing to share any information it has with the Judiciary Committee.

In response to a question from Representative Hawken, Ms. Mills said there is a great deal of dissatisfaction with the current system for handling discrimination complaints.

In response to a question from Senator Watne, Ms. Mills said housing and employment are the areas in which most incidents of discrimination occur. She said the persons most often discriminated against in employment and housing are single mothers. She said the impression that most employers and landlords have is that single mothers are all on welfare. She said it is important to have a human rights commission that can provide education to employers and landlords regarding discrimination. She said the advisory committee has very specific functions and can only advise the United States Civil Rights Commission on issues of discrimination in North Dakota. She said the advisory committee has no staff and all members are volunteers.

In response to a question from Representative Maragos, Ms. Mills said, at a minimum, the state should set up a clearinghouse-type office to collect data and to make referrals.

## UNIFORM LAWS

Vice Chairman Kretschmar called on Mr. Jay E. Buringrud, Secretary, North Dakota Commission on Uniform State Laws, for comments regarding the recommendation of the commission for the enactment of uniform laws. Mr. Buringrud said the North Dakota Commission on Uniform State Laws was established by North Dakota Century Code Section 54-55-01. He said the commission consists of:

- A practicing lawyer (Mr. David Hogue).
- A full-time faculty member of the University of North Dakota School of Law (Professor Patricia Brumfield Fry).
- A law-trained judge of a court of record (District Judge Gail Hagerty).
- A member of the House (Representative William E. Kretschmar).
- A member of the Senate (Senator Wayne Stenehjem).
- A member of the Legislative Council staff (Mr. Buringrud).
- Life members of the conference (Judge Eugene Burdick, Frank Jestrab).

- Residents with five years' prior experience (Mr. Mike Unhjem, Professor Owen Anderson).

Mr. Buringrud said commissioners are required to attend the annual meeting of the National Conference of Commissioners on Uniform State Laws. The major duties, he said, are to promote uniformity in state laws on those subjects to where uniformity may be deemed desirable and practicable and promote uniform judicial application and construction of all uniform state laws. He said the commission may submit recommendations for enactment of uniform and model laws to the Legislative Council.

Mr. Buringrud said the commission met on July 26, 1997, and is making five recommendations to the Legislative Council.

#### **Uniform Management of Public Employee Retirement Systems Act**

Mr. Buringrud said this Act will govern public employee retirement systems, which are not governed by federal law under the Employees Retirement Income Security Act. The objectives of the Act, he said, are to:

- Establish all such systems as trusts;
- Establish the basic fiduciary obligations of trustees for such trusts;
- Introduce prudent investment rules for public employee retirement systems trusts; and
- Provide disclosure and reporting requirements.

#### **Uniform Child Custody Jurisdiction and Enforcement Act**

Mr. Buringrud said this Act replaces the Uniform Child Custody Jurisdiction Act (originally promulgated in 1969), which North Dakota enacted in 1969 as North Dakota Century Code Chapter 14-14. The 1969 Act, he said, has been adopted in every state. The objectives of the revision, he said, are to:

- Eliminate differences between the uniform Act and the federal Parental Kidnapping Prevention Act (the primary difference is continuing exclusive jurisdiction);
- Clarify the scope of child custody actions to which the Act applies;
- Prioritize the home state as a ground for taking jurisdiction and clarify the emergency jurisdictional grounds; and
- Add interstate enforcement procedures and powers to improve interstate enforcement of child custody orders.

#### **Uniform Principal and Income Act (1997)**

Mr. Buringrud said this Act is a revision of the Uniform Principal and Income Act of 1962, which North Dakota enacted in 1969 as North Dakota Century Code Chapter 59-04.1. He said under this Act, a trustee of a trust must serve the interest of both income and remainder beneficiaries. Assets allocated to income are generally paid to the income beneficiaries and assets allocated to principal are distributed to the remainder beneficiaries at the termination of the trust. The uniform Act has always provided the default rules for such allocation if the trust instrument is silent. Mr. Buringrud said the objectives of the 1997 revision are to:

- Make principal and income rules conform to prudent investor rules under the Uniform Prudent Act, which North Dakota enacted in 1997 as North Dakota Century Code Sections 59-02-08.1 through 59-02-08.11;
- Clarify better allocations of acquired assets, such as those from corporate distributions;
- Provide for investment modalities that were not in existence in 1962 such as derivatives, options, deferred payment obligations, and synthetic financial assets;
- Deal with any problem of disbursements because of environmental laws;
- Deal with allocation imbalances as a result of tax laws.

#### **Uniform Guardianship and Protective Proceedings Act (1997)**

Mr. Buringrud said this Act is also Article V of the Uniform Probate Code, which North Dakota enacted in 1973. He said in North Dakota, Article V of the Uniform Probate Code consists of North Dakota Century Code Chapters 30.1-27 through 30.1-30. He said the major objectives of this revision are to:

- Provide for standby guardians for children;
- Require better control of conservators; and
- Allow delegation of investment authority.

#### **Technical Amendments Approved by the National Conference's Executive Committee**

Mr. Buringrud said to date technical amendments have been made to the Uniform Probate Code Sections 1-403, 2-503, 2-606, 2-803(c)(2), 3-703, and 3-803(a).

Vice Chairman Kretschmar called on Mr. Alvin A. Jaeger, Secretary of State, for comments concerning the uniform law recommendations. Mr. Jaeger said the Secretary of State's

office is working with a committee of the State Bar Association to review proposed amendments to the Uniform Partnership Act. He said the Secretary of State's office would like to be involved from the standpoint of being able to modify any revision in order that the procedures conform to current office procedures.

**It was moved by Senator Nelson, seconded by Representative Sabby, and carried on a voice vote that the Uniform Management of Public Employee Retirement Systems Act be referred to the Employee Benefits Programs Committee for review.**

### COMMITTEE DISCUSSION

Senator Watne said the leadership of the North Dakota Fair Housing Council should be requested to appear at the next meeting to discuss how the council's grants are being used in the state.

Representative Nottestad suggested that the committee receive information regarding the budgets, costs, composition, duties, and powers of human rights commissions of other states. He said the committee may want to invite the executive director of the South Dakota Human Rights Commission to appear before the committee.

Representative Stenehjem said the North Dakota Department of Labor may be the logical place for the "one-stop shop" office to be housed.

Representative Nottestad requested that the committee receive a summary of the North Dakota Advisory Committee hearings.

Representative Delmore said Ms. Holly Marian, Grand Forks Office of Community Relations, should be invited to provide statistics on discrimination.

**It was moved by Representative Maragos, seconded by Senator Redlin, and carried on a voice vote that the Gaming Division of the Attorney General's office be requested to (1) standardize rules for the game of bingo; (2) study the video surveillance issue and bring recommendations to the next meeting; and (3) provide information regarding excess expense funds.**

Representative Maragos suggested that the Clerks of Court Association be requested to provide information regarding court fee structure and to suggest areas where changes could be made.

Vice Chairman Kretschmar said the next Judiciary Committee meeting is tentatively scheduled for January 12, 1998, in the Roughrider Room.

Vice Chairman Kretschmar adjourned the meeting at 11:35 a.m.

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Vonette J. Richter  
Counsel

ATTACH:10