

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIARY COMMITTEE

Thursday and Friday, May 25-26, 2000

Prairie Rose Room, Radisson Hotel

Fargo, North Dakota

Roughrider Room, State Capitol

Bismarck, North Dakota

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

Members present: Senators Wayne Stenehjem, Dennis Bercier, Joel C. Heitkamp, Judy Lee, Stanley W. Lyson, Carolyn Nelson, John T. Traynor, Darlene Watne; Representatives Lois Delmore, G. Jane Gunter, Kathy Hawken, Scot Kelsh, Lawrence R. Klemin, Kim Koppelman, John Mahoney, Shirley Meyer, Phillip Mueller

Members absent: Representatives Duane DeKrey, Dennis E. Johnson, Amy N. Kliniske

Others present: See attached appendix

It was moved by Representative Delmore and seconded by Representative Koppelman, and carried on a voice vote that the minutes of the April 10, 2000, meeting be approved as distributed.

PUBLIC HEARINGS ON BALLOT MEASURES

Chairman Stenehjem said the chairman of the Legislative Council assigned to the Judiciary Committee the duty of conducting public hearings on the constitutional measures scheduled to appear on the ballot in the primary and general elections. He said it is not the purpose of the Judiciary Committee to take a public stand on the measures. He said the purpose of the hearings is to promote and stimulate public discussion and debate and to create a public history.

At the request of Chairman Stenehjem, committee counsel reviewed a memorandum entitled *Information on the 2000 Primary Election Ballot Measures*. She said there are no initiated measures or referred measures on the primary election ballot.

Measure No. 1 - Membership of State Board of Higher Education

Chairman Stenehjem called on Mr. Larry Isaak, Chancellor, State Board of Higher Education, for testimony regarding measure No. 1. Mr. Isaak said the State Board of Higher Education supports the passage of measure No. 1. He said a 1996 study of higher education in North Dakota funded by the Bush

Foundation recommended that the state improve the process by which members of the Board are recruited and appointed. He said the report recommended that the constitution be amended to remove the restriction that no two undergraduate alumni from the same institution can serve simultaneously. He said the passage of this measure would provide the flexibility necessary to attract a broader pool of candidates for the board. He said measure No. 1 keeps intact the principle that a majority of the board could not be a graduate of any one campus in the state. Mr. Isaak submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Watne, Mr. Isaak said the measure only limits the number of board members who receive bachelor's degrees from the same institution. He said there could be more than two members on the board who had received an associate, master's, or doctorate degree from the same institution.

Chairman Stenehjem called on Chief Justice Gerald W. VandeWalle, Supreme Court, for testimony regarding measure No. 1. Chief Justice VandeWalle said he was speaking in his capacity as a member of the State Board of Higher Education Appointment Committee. He said the Appointment Committee provides to the Governor a list of eligible candidates for vacant positions on the State Board of Higher Education. He said the constitution originally prohibited more than one alumnus or former student of the state institution to serve on the board at the same time. He said this was changed in 1976 to "not more than one graduate." In 1996, he said, the section was amended again to include "bachelor's degree." He said the Appointment Committee makes an effort to not identify positions on the board with certain institutions, such as the "UND seat" or the "NDSU seat." He said measure No. 1 would increase the number of good candidates for the board.

Chairman Stenehjem called on Mr. Max Laird, President, North Dakota Education Association, for testimony concerning measure No. 1. Mr. Laird said the recent change in the length of board members' terms from seven years to four years gives the Selection Committee the opportunity to review candidates

more frequently. He said that change, as well as the change proposed in measure No. 1, will help in an effort to "raise the bar" on the quantity and quality of candidates for board positions. He said the Appointment Committee uses a clearly democratic process when screening candidates and that it is able to forward a good list of candidates to the Governor. He said he would like to see 15 to 20 candidates per cycle and that the passage of measure No. 1 would help accomplish that goal.

In response to a question from Senator Traynor, Mr. Laird said there are members of the board who have degrees from out-of-state colleges and universities.

In response to a question from Senator Stenehjem, Mr. Laird said it would be possible to have eight members on the board who were graduates of Bismarck State College or the State School of Science. He said, however, because of the changing dynamics of the Appointment Committee, it is not likely that such a makeup would occur. He said the Appointment Committee looks for candidates who want to represent higher education as a whole and not just a particular institution.

Measure No. 2 - Election of Executive Branch Officials

Acting Chairman Watne called on Senator Wayne Stenehjem for testimony regarding measure No. 2. Senator Stenehjem said as a sponsor of Senate Concurrent Resolution No. 4017, he supports the passage of measure No. 2. He said because the Labor Commissioner is no longer an elected position, the only statewide official who will be elected in nonpresidential year elections will be one public service commissioner. He also said because state representatives are now elected to four-year terms, one public service commissioner position will be the only position on the ballot in half the districts in the state in nonpresidential years. Under measure No. 2, he said, there would be six statewide officials elected in a presidential year and six elected in the nonpresidential year. He said there are not enough campaign volunteers or campaign contributions to go around when all statewide officers are elected in one election. He said about 30 states elect their governors in the nonpresidential year election. He said the passage of measure No. 2 would better serve the citizens of the state. Senator Stenehjem distributed a copy of a mock ballot which represented how the 2002 and 2004 ballots would appear if measure No. 2 failed and how the 2006 ballot would appear if measure No. 2 is approved. Senator Stenehjem also distributed copies of several newspaper articles in support of measure No. 2. Copies of the mock ballot and newspaper articles are on file in the Legislative Council office.

In response to a question from Senator Traynor, Senator Stenehjem said the passage of measure No. 2 would not affect the 2000 election. He said the only drawback of measure No. 2 would be that eight

candidates for office in 2004 would have to run for a two-year term rather than a four-year term.

In response to a question from Representative Delmore, Senator Stenehjem said voter turnout in 2002 could be very bleak in the legislative districts that do not have legislative races.

In response to a question from Representative Mahoney, Senator Stenehjem said in 2002 the only races on the ballot in the even-numbered districts will be the election of one public service commissioner and the state's representative to Congress.

In response to a question from Senator Traynor, Senator Stenehjem said it is difficult for candidates to get media attention when the ballot is so long.

Chairman Stenehjem called on Ms. Crystal Dueker, Public Access, Fargo, for testimony regarding measure No. 2. Ms. Dueker said she supports measure No. 2 because it would place more focus on the nonpresidential year election.

Chairman Stenehjem called on Mr. Alvin A. Jaeger, Secretary of State, for testimony regarding measure No. 2. Mr. Jaeger said as one of the elected officials whose office would be impacted by the passage of measure No. 2, he is in support of the measure. He said moving the election of these four constitutional officers to the nonpresidential year election cycle would allow the voters to become more knowledgeable about each individual candidate and about each candidate's qualifications to hold public office. He said because of the large number of positions listed on the present statewide ballot, it is challenging for the voters to adequately learn about all the candidates' qualifications. He said the resources of the media are spread too thin among the many different races and it becomes a challenge for the media to adequately provide coverage of the elections. He said the passage of this measure would benefit and enhance the state's system of government. He said measure No. 2 would enhance the interest and more persons may want to consider a run for a statewide elected office. He also said measure No. 2 would strengthen the political party structure. Mr. Jaeger submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Traynor, Mr. Jaeger said if measure No. 2 is approved, candidates would run for a two-year term in 2004 and a four-year term in 2006. He said a vacancy in any of these offices would be filled by the Governor. An appointed person, he said, would serve the remainder of the term for that office.

In response to a question from Senator Lyson, Mr. Jaeger said because a larger pool of candidates is needed in the presidential years, it is often a challenge to find enough candidates to fill the ballot. He said if the only statewide position on the ballot is the public service commissioner, there would likely be a lower voter turnout.

Chairman Stenehjem called on Mr. Michael Lindblom, Bismarck, for testimony regarding measure

No. 2. Mr. Lindblom said measure No. 2 would be good for the voters of the state. He said the "big names" at the top of the ballot limits the amount of enthusiasm for the "less important" races at the bottom of the ticket. He said a long ballot makes it difficult for the media to cover all the races in depth. If passed, he said, the result would be good voter turnout at both elections.

In response to a question from Senator Stenehjem, Mr. Lindblom said there is only so much television and radio time and only so much newspaper space. He said the result is that all races do not get the same amount of coverage.

Chairman Stenehjem called on Mr. Robert R. Peterson, State Auditor, for testimony regarding measure No. 2. Mr. Peterson said he supports the passage of measure No. 2. He said eventually the state may want to move even more statewide office elections to the nonpresidential year.

Measure No. 3 - Elimination of State Treasurer Position

Testimony in Support of Measure No. 3

Chairman Stenehjem called on Ms. Dueker for testimony concerning measure No. 3. Ms. Dueker said she supports the passage of measure No. 3 because it would provide for a more effective and efficient government. She said of the seven positions in the State Treasurer's office, only two would need to be retained. She said those two positions could be a part of the Office of Management and Budget. She said the passage of measure No. 3 would streamline government and give North Dakota taxpayers "more bang" for their "tax buck."

In response to a question from Senator Heitkamp, Ms. Dueker said this issue was before the voters in 1984. She said this measure is an opportunity to determine if public opinion on the issue has changed.

Chairman Stenehjem called on Representative Al Carlson, Fargo, for testimony regarding measure No. 3. Representative Carlson said he was testifying on behalf of North Dakotans for Government Efficiency and that he supported measure No. 3. He said the State Treasurer's office has a long history in the state dating back to 1889. He said North Dakota is different from other states in that the state has its own bank, the Bank of North Dakota, which manages many of the state's deposits. He said the Office of Management and Budget also performs some of the same functions as the State Treasurer's office. He said advancements in electronic technology have changed the way the state does its business. He said regardless of the amount of money which can be saved or the number of FTEs involved, there is a responsibility to the citizens of the state to create good public policy and good cost-efficient government. He said any unnecessary expense, whether it be \$1 or \$1 million, is unnecessary and should not be spent. He said the duties presently performed by the State Treasurer's office could be

performed by the Office of Management and Budget, the Bank of North Dakota, and the Attorney General's office. He said the responsibility of the State Treasurer's office for the veterans' postwar trust fund could be transferred to the State Retirement and Investment Office. He said other states, including Texas and Minnesota, have abolished or have plans to abolish their state treasurers' offices. He said North Dakota has enough government for two million people, but unfortunately, the state does not have two million people. He said people of the state want an efficient government.

In response to a question from Representative Delmore, Representative Carlson said there are enough employees in other agencies to handle most of the duties of the State Treasurer's office. He said all the duties could be handled by existing employees plus two additional FTEs.

In response to a question from Senator Heitkamp, Representative Carlson said even though a similar measure was defeated in the past, there will always be people who want a more efficient government. He said he would have preferred that the measure appear on the general election ballot rather than the primary election ballot.

In response to a question from Senator Lee, Representative Carlson said given the changes in technology, 16 years is an appropriate amount of time to revisit the treasurer issue.

Chairman Stenehjem called on Mr. Dick Hedahl, North Dakotans for Government Efficiency, for testimony regarding measure No. 3. Mr. Hedahl said he supports the passage of measure No. 3. He said, as a businessman, he understands the importance of running government efficiently. He said advancements in technology, including the use of electronic payments and deposits, have taken away many of the manual duties of the State Treasurer's office. He said with the use of technology and other existing state agencies, the State Treasurer's office is virtually obsolete and unnecessary. He said other states are recognizing the changing business environment and are voting to eliminate their state treasurers. He said Texas and Minnesota recently voted to eliminate this office and North Dakota should as well. He said none of the work currently performed by the State Treasurer's office would be compromised. Existing executive branch agencies, he said, could easily absorb all the duties and in the process could eliminate five FTEs. He said the passage of measure No. 3 would result in a net saving to the taxpayers of over \$500,000 per biennium. He said people who opposed measure No. 3 argue that the office is efficient and costs the taxpayers very little in comparison to overall state spending. He said any expense is too much expense if it is unnecessary.

In response to a question from Senator Stenehjem, Mr. Hedahl said there is not a need for this office. He said North Dakota has more elected officials than any other state. He said he became

interested in the issue because of his concern for a more efficient, streamlined government.

Chairman Stenehjem called on Mr. Rod Backman, Director, Office of Management and Budget, for testimony regarding measure No. 3. Mr. Backman said he supports the passage of measure No. 3 and that it is time that North Dakota government move out of the 19th century. This measure, he said, is a good step in that direction. He said the \$500,000 net savings figure was developed by the Office of Management and Budget during the last legislative session. He said an additional \$40,000 could be saved by using the office space currently occupied by the State Treasurer's office by some other agency that is housed and paying rent outside the Capitol. He said the Bank of North Dakota, an agency that other states do not have, could handle many of the duties performed by the State Treasurer's office.

In response to a question from Senator Watne, Mr. Backman said if the measure passes, the Legislative Assembly would be responsible for deciding which agency should be assigned the duties of the State Treasurer's office.

In response to a question from Representative Koppelman, Mr. Backman said most of the duties of the State Treasurer are clerical in function and it is not necessary for an elected official to oversee clerical work. He also said the problem with having so many elected state officials is that voters tend to not pay attention to the "lower" offices on the ticket. He said many people do not know what duties those offices perform or who the candidates for those offices are.

In response to a question from Representative Delmore, Mr. Backman said the \$500,000 savings includes the FTEs, equipment, and operating costs. He said this figure indicates the net savings. He said approximately \$200,000 would be needed to fund the two necessary FTEs.

In response to a question from Representative Klemin, Mr. Backman said the State Treasurer's duties that would not be considered ministerial would be serving on the Board of University and School Lands and other statutory boards and the approval of checks for payment.

In response to a question from Senator Lee, Mr. Backman said because the State Treasurer's office contracts with the State Retirement and Investment Office to invest the funds in the veteran's postwar trust fund, it is only logical that those duties be transferred to that office.

In response to a question from Senator Traynor, Mr. Backman said the State Treasurer's office is involved in the "receipting" process of the depositing of funds but does not actually make deposits or handle funds.

In response to a question from Representative Mahoney, Mr. Backman said he considers the office's duties of deposits and bank reconciliations to be clerical in nature. He said he is aware of former employees of the State Treasurer's office who said

there was not much work for them to do when they were working in that office.

In response to a question from Representative Delmore, Mr. Backman said it would be a legislative decision as to where the two new FTEs would be located, but it is likely they would be part of the Office of Management and Budget. He said the alcoholic beverage regulation duties could be performed by the Attorney General's office and the alcoholic beverage excise tax collection could be performed by the Tax Department.

In response to a question from Representative Mueller, Mr. Backman said this measure would not take away the voice of the people because the Tax Commissioner and the Attorney General are both elected officials and the director of the Office of Management and Budget answers to the Governor, also an elected official. He said there is little awareness among the voters as to who these elected officials are, much less what their duties entail.

In response to a question from Representative Mahoney, Mr. Backman said many of the duties of the Tax Commissioner and the State Auditor's office could be considered clerical as well.

Mr. Backman distributed to the committee an estimate of the potential savings from the elimination of the State Treasurer's office. He said the total savings is estimated at \$586,170. He said the cost of salaries, benefits, and operating expenses transferred to other agencies is estimated at \$176,000. Mr. Backman also distributed information on how North Dakota ranks among other states regarding the number of elected state officials. Copies of both documents are on file in the Legislative Council office.

Chairman Stenehjem called on Mr. Kevin Strege, Chairman, Bismarck-Mandan Chamber Legislative Affairs Committee. Mr. Strege said the chamber takes the general position that it supports legislation that supports further consolidation and reorganization of government entities at all levels when it provides for a more efficient, effective, and economical government. In light of that position, he said, the chamber supports measure No. 3. He said the world of business is changing. He said business looks to government to aspire to run the government's business under today's business standards. He said with the use of technology and more efficient methods of doing their jobs, people in the business world are being asked to do more with less. He said another trend in the business world is the consolidation of management. He said fewer management people supervising a more diverse work group brings more efficiency to an operation. He said in the interest of general efficiency, he is in support of measure No. 3.

Chairman Stenehjem called on Mr. Curtis L. Wolfe, Chief Information Officer, Information Technology Department, for comments regarding measure No. 3. Mr. Wolfe said the significant advancements in information technology will have a dramatic impact on the state and on state government. He said within five

years many state agencies will be provided a substantial portion of their services on-line. He said the state needs to reengineer how the state does its business. He said it will be necessary to look at ways of reducing the costs of state government. He said the state will need to rely less on "brick and mortar" and more on "click and mortar." He said more activities can be done interactively on-line. He said the use of electronic commerce by state government is on the increase. He said electronic commerce will allow the state to condense and move duties between departments. He said the State Treasurer's office is a victim of these advances in technology. He said as the state pursues more technology, more state functions will follow as well.

In response to a question from Representative Delmore, Mr. Wolfe said while it is important to provide services to the public, the public is demanding more on-line services. He said a study in Alaska revealed that the cost of conducting a vehicle registration in person was \$9, compared to a cost of \$1.17 to perform the same registration on-line.

In response to a question from Representative Meyer, Mr. Wolfe said the state will need the infrastructure to deal with the aging population of the state. He said U S West has plans to provide training sessions to bring the aging population to a certain computer comfort level.

Testimony in Opposition to Measure No. 3

Chairman Stenehjem called on Mr. Robert Hansen, Ed Phillips and Sons of North Dakota, Fargo, for testimony regarding measure No. 3. Mr. Hansen said he opposes the passage of measure No. 3. Mr. Hansen distributed a copy of a position paper of the State Treasurer's office, a copy of which is on file in the Legislative Council office.

Mr. Hansen said the alcoholic beverage industry generates over \$5 million a year for the state. He said the State Treasurer deals with the licensing and regulation of wholesalers and distributors but also helps with the regulation of suppliers. He said the alcoholic beverage industry is vulnerable to abuse and the State Treasurer is doing a good job of regulating the industry. He said the State Treasurer is authorized to conduct audits.

In response to a question from Representative Delmore, Mr. Hansen said reassigning the State Treasurer's duties to another agency does not eliminate the costs of performing those duties. He said the State Treasurer's office is very streamlined. If the alcoholic beverage regulation duties are reassigned to the Attorney General's office, he said, eventually an alcohol control commission will need to be developed. He said the result will be even more levels of government.

In response to a question from Senator Stenehjem, Mr. Hansen said Minnesota will be eliminating its State Treasurer position in 2003, but the issue may be revisited.

Chairman Stenehjem called on Mr. Jared Anderson, Congress, Inc., Fargo, for testimony regarding measure No. 3. Mr. Anderson said alcoholic beverage dealers are required to keep very complex accounting records of their invoices, shipping records, and inventory. He said all accounting records are required to be sent to the State Treasurer's office. He said the North Dakota State Treasurer's office is held in high regard in Washington, D.C.

In response to a question from Senator Lee, Mr. Anderson said that the recordkeeping done by the State Treasurer's office is very detailed and if the position is eliminated, there will still be a need for someone to maintain those records.

Chairman Stenehjem called on Mr. Robert Hanson, State Treasurer's Office Preservation Committee, Bismarck, for testimony regarding measure No. 3. Mr. Hanson said he is a former State Treasurer and former State Tax Commissioner. He said he is opposed to measure No. 3. He said the framers of the state's constitution believed it was important for officials to be elected. He said an elected official is accountable to the people. He said the framers believed the government belongs to the people. He said appointed officials do not always perform in the most exemplary way. He said appointed officials are only accountable to the person who makes the appointment and appointed officials are not subject to recall. He said the people of the state do not want the control of the government in the hands of just a few elected officials. The constitution, he said, has in place a system of checks and balances to address problems with elected officials. He said the State Treasurer has various enforcement powers, including the authority to impose fines. He said, in his experience as State Treasurer, the alcoholic beverage industry was very easy to work with and there were few instances when enforcement powers were needed. He said it would not be possible for another agency to perform all the State Treasurer's duties in addition to that agency's regular duties unless that agency is currently overstaffed. He said to eliminate the State Treasurer would be taking government away from the people. He also said one of the State Treasurer's duties is to control the veterans' postwar trust fund. He said only \$1 million of the \$4 million in the fund is handled by the State Retirement and Investment Office.

In response to a question from Representative Meyer, Mr. Hanson said the State Treasurer's office's only involvement in child support payments is the signing of the checks.

Chairman Stenehjem called on Mr. Gary I. Anderson, Wholesale Liquor Distributors of North Dakota, Bismarck, for testimony regarding measure No. 3. Mr. Anderson said he has been in the wholesale liquor business for 42 years. He said the duties of the State Treasurer include collecting excise taxes and regulating the industry. He said any noncompliance is

reported to that office. He said it is important to keep this office for those duties.

In response to a question from Senator Watne, Mr. Anderson said a large number of invoices are required to be submitted to the State Treasurer's office. He said an invoice is required to be submitted for every item sold.

In response to a question from Representative Klemin, Mr. Anderson said the State Treasurer's office conducts audits. He said the industry is required to abide by detailed accounting and auditing procedures.

Chairman Stenehjem called on Ms. Chris Runge, North Dakota Public Employees Association, AFL-CIO, for testimony regarding measure No. 3. Ms. Runge said she opposes measure No. 3. She said the question is whether the passage of this measure would streamline government. She said the passage of this measure will be asking public employees to do more with less.

Chairman Stenehjem called on Ms. Carol M. Siegert, Deputy State Treasurer, State Treasurer's office, for testimony regarding measure No. 3. Ms. Siegert said the State Treasurer's office opposes the passage of measure No. 3. She said the elimination of this office strips the people of their right to elect their own state officials. She said the elimination of the office would weaken accountability, increase bureaucratic costs, and move the people further away from the process. Removal of this office, she said, would add power to agencies that report to the Governor, not to the people. She said centralizing responsibility from the people to the Governor does not strengthen accountability and efficiency. She said North Dakotans spoke to this issue in 1984 and it was defeated by a 60 percent vote. The voters, she said, have soundly rejected abolishing a constitutional office and giving up their right to say who will serve them.

Ms. Siegert said with a biennial budget of only \$695,265, the office is one of the most frugal in state government and at the same time provides a necessary check and balance in the distribution of state moneys. She said with a staff of seven, the office provides cost-effective, efficient government. She said breaking apart the State Treasurer's office and moving it to four state agencies would eliminate the ability to track how those dollars are spent and bureaucracy would grow. She said this raises the question as to whether these four agencies are going to hire more staff or are they going to have current employees absorb the responsibilities which would indicate they are presently overstaffed.

Ms. Siegert said the State Treasurer did not ask anyone from the alcoholic beverage industry to testify on measure No. 3. She submitted written testimony, a copy of which is on file in the Legislative Council office. Ms. Siegert also submitted a letter from Mr. Robert Hansen, Fargo. In his letter, Mr. Hansen said that although both Minnesota and Texas are

eliminating their state treasurer offices, both states have liquor control commissions or boards to regulate the industry. A copy of Mr. Hansen's letter is on file in the Legislative Council office.

In response to a question from Representative Klemin, Ms. Siegert said the office is in the process of updating its system to allow for the electronic reporting of invoices. She said the office has only recently been given sufficient funding to computerize its system.

Neutral Testimony on Measure No. 3

Chairman Stenehjem called on Mr. Randy Christianson, President, North Dakota Beverage Wholesalers Association, for testimony concerning measure No. 3. Mr. Christianson said he is not necessarily for or against measure No. 3, but he is concerned about who would be responsible for the alcoholic beverage enforcement duties of the State Treasurer if that position is eliminated. He said, in his experience, the Attorney General's office is not as experienced and is not as familiar with federal alcohol regulations as the State Treasurer's office has been. He said the State Treasurer's office has been stable and helpful and there is a concern among the industry that the passage of measure No. 3 would change that.

In response to a question from Representative Mahoney, Mr. Christianson said the State Treasurer's office has always been very cooperative and available to interpret state statutes regardless of who has held the office.

In response to a question from Representative Koppelman, Mr. Christianson said the State Treasurer is responsible for registering all brands of beer brought into the state.

In response to a question from Senator Watne, Mr. Christianson said the State Treasurer has various enforcement powers to regulate the alcoholic beverage industry, including the use of fines and nonrenewal of licenses.

In response to a question from Representative Kelsh, Mr. Christianson said most of his contacts have been directly with the State Treasurer's office. He said his only contact with the Attorney General's office has been when an opinion was requested.

Chairman Stenehjem called on Ms. Janet Seaworth, North Dakota Beer Wholesalers Association, for testimony regarding measure No. 3. Ms. Seaworth said there are concerns about how the passage of this measure would affect the industry. She said the State Treasurer's office issues licenses, collects excise taxes, and advises and counsels persons in the industry on how to conduct business. She said regulating the alcoholic beverage industry has not been a big problem in North Dakota. She said part of the reason for the lack of problems is the honest nature of the people in North Dakota. She said it is also due in part to the effectiveness of the State Treasurer's office and the fact that the State

Treasurer is an elected official. She said when she has a problem she can usually talk directly to the State Treasurer. She said if those duties are assigned to the Tax Department or the Attorney General's office, it is not likely that she would be able to talk directly with the Attorney General or the Tax Commissioner to discuss her concerns. She said there is a concern that the alcoholic beverage industry will fall through the cracks if assigned to another agency. Presently, she said, the alcoholic beverage industry is required to report to just one agency. This, she said, is streamlined government. If the duties are spread out among two or three agencies, the result will be a less streamlined government. She said if the functions are divided among several agencies and those functions do not get the necessary attention, it is likely that an alcohol control board or commission will be created. She said most states use a board or commission to regulate their industry. She said it would be unusual for more than one agency to be involved in regulating the same industry. She said while other states may have eliminated their treasurers' offices, those offices were not responsible for regulating the alcoholic beverage industry.

In response to a question from Representative Klemin, Ms. Seaworth said although the assignment of the regulation duties would be a legislative decision, there is concern in the industry about where those duties would be assigned.

In response to a question from Senator Lee, Ms. Seaworth said her testimony was not solicited by the State Treasurer's office. She said she is not taking a position on the measure, but that there are concerns about how day-to-day business would be conducted. She said keeping all the duties in one office allows for institutional memory.

In response to a question from Senator Bercier, Ms. Seaworth said most states have a separate agency devoted to the regulation of the alcoholic beverage industry.

In response to a question from Representative Klemin, Ms. Seaworth said the State Treasurer's office contracts with other agencies for auditing services.

Measure No. 4 - Filling of Legislative Vacancies

Chairman Stenehjem called on Mr. Jim Lee, Fargo, for testimony regarding measure No. 4. Mr. Lee said as a concerned citizen, he is opposed to measure No. 4. He said because representatives now serve four-year terms, it is likely that there will be more legislative vacancies than ever before. He said this measure would allow the Legislative Assembly to determine how a vacant legislative seat is to be filled. He said this measure would give a nonelected

legislator an undue advantage in the next election. He said the selected or appointed legislator could potentially serve four years before having to face an election. He said the measure leaves room for political mischief.

In response to a question from Senator Nelson, Senator Stenehjem said if, in the middle of his or her term, a sitting senator or representative is elected to a statewide office, a special election is held to fill the vacancy.

Senator Stenehjem said the measure, as originally drafted, provided that the political party of the legislator who vacated the seat would be able to make the appointment to fill the seat. He said measure No. 4 only provides that the Legislative Assembly is to develop a procedure for filling vacancies.

In response to a question from Representative Koppelman, Mr. Lee said it should be possible to streamline the election process so that an election to fill a vacancy could be held more quickly.

In response to a question from Representative Hawken, Mr. Lee said he would be more likely to support the measure if it had contained language that the Legislative Assembly could fill the vacancy "until the next election."

Senator Stenehjem said perhaps more safeguards could have been written into this measure. He said he hoped Mr. Lee would remain involved in the issue if the measure is approved and the Legislative Assembly has the opportunity to develop a procedure to fill vacancies.

Chairman Stenehjem called on Ms. Dueker for testimony regarding measure No. 4. Ms. Dueker said the public is not clear on how the current system works or how the system would work if this measure is passed.

Representative Koppelman said this measure simply allows the Legislative Assembly to adopt a procedure. He said the measure does not specify what that procedure will be, but it does eliminate the Governor's authority to fill the vacancies.

Senator Heitkamp said this measure would allow the majority party at the time to adopt a procedure that would benefit that party. He said the intent of the legislation was not partisan politics but rather was over a concern that all districts have representation during legislative sessions.

Chairman Stenehjem adjourned the meeting in Bismarck on May 26 at 12:00 noon.

Vonette J. Richter
Counsel

ATTACH:1