

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Wednesday, September 8, 2004
Roosevelt Room, State Capitol
Bismarck, North Dakota

Representative Scot Kelsh, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Scot Kelsh, Andrew Maragos; Senator Bill L. Bowman; Citizen Members Randy Bina, Donny Malcomb, Mike Montplaisir, Bev Nielson, Devra Smestad

Members absent: Senator Michael Polovitz; Citizen Members Ron Anderson, Bob Frantsvog; Governor John Hoeven

Others present: See Appendix A

It was moved by Senator Bowman, seconded by Citizen Member Smestad, and carried on a voice vote that the minutes of the June 10, 2004, meeting be approved as distributed.

SHERIFF SERVICE OF PROCESS

Chairman Kelsh called on Mr. Ted Gladden, State Court Administrator, Supreme Court, for comments regarding issues relating to court payment of sheriffs for service of process. Mr. Gladden briefly reviewed how the issue arose, stating that a 1998 Attorney General's opinion states that sheriffs can charge a court for the sheriff providing personal service. However, he said, the courts have not appropriated money for this purpose. To further complicate matters, he said, some sheriffs charge the courts for personal service and some do not charge the courts for personal service.

Mr. Gladden distributed a document summarizing the result of a recent survey performed by the State Court Administrator's office regarding how each of the counties in the state provides for service of documents and the associated costs. A copy of this document is on file in the Legislative Council office. Based upon this survey, he said, the cumulative court cost for paying sheriffs for personal service would be approximately \$400,000 per biennium. He said at this point the courts are not prepared to pay sheriffs for service of process; however, there has been a move by the district court judges to provide that once a party is served with a summons and complaint or by warrant, all subsequent service will be by first-class mail.

In response to a question from Senator Bowman, Mr. Gladden said administration of the court payment of approximately \$400,000 per biennium would likely not require any additional personnel at the state or county level.

MUTUAL AID

Chairman Kelsh called on Mr. Douglas Friez, State Director, Division of Emergency Management, for comments regarding the activities of the Intrastate Mutual Aid Committee. Mr. Friez distributed a copy of proposed legislation relating to intrastate mutual aid and written testimony, copies of which are attached as Appendix B.

Mr. Friez said in North Dakota when an emergency occurs and someone asks for help, we know that help will come. However, he said, when the request for assistance comes from one community to another, we cannot afford for the response to be held up while the involved parties work out an agreement. Mr. Friez said the proposed legislation relating to intrastate mutual aid provides the basic groundwork for these communities requesting help from one another, so they know where they stand and there is no hesitation in responding.

Mr. Friez said formal mutual aid agreements exist between many jurisdictions across the state but most of these agreements are not statewide. He said the proposed legislation fills in these gaps for situations in which a formal mutual aid agreement does not exist.

Mr. Friez said following the events of 9/11, the Department of Homeland Security and National Emergency Management Association recognized the need to effectively move assets between local jurisdictions as they respond to disasters. He said the North Dakota Division of Emergency Management identified and brought together 24 agencies and organizations to discuss the need for intrastate mutual aid legislation and ultimately formed a smaller working group to help draft the proposed legislation. He said the draft legislation went through several revisions in response to the working group's suggestions, as well as suggestions by outside experts in order to reach the form presented to the commission today. Mr. Friez said he is seeking legislative sponsorship of this bill draft rather than agency sponsorship and he is looking for bipartisan support.

In response to a question from Senator Bowman, Mr. Friez said in the example of the recent wildfire in southwestern North Dakota, implementation of this proposed legislation would not have impacted any of the formal mutual aid agreements that might have been in place. For example, he said, the firefighting system has a relatively complete system relating to

mutual aid; however, the proposed bill draft would add more disciplines, and some of these disciplines do not have as complete a mutual aid system. Mr. Friez said under the incident command system, there is a protocol for joint and unified command.

Senator Bowman said in his experience with this fire, there was a certain amount of uncertainty regarding who was authorized to make decisions.

Mr. Friez said one purpose of the proposed legislation is to help local communities determine the command system, recognizing of course that no system is perfect.

In response to a question from Representative Maragos, commission counsel said there was not enough time to prepare this proposed legislation as a commission bill draft and the supplementary rules of operation and procedure of the Legislative Council provide that unless a bill draft is drafted by the Legislative Council, the bill draft must be considered by the committee recommending that bill draft on at least two meeting days.

Chairman Kelsh called on Colonel Bryan Klipfel, Superintendent, Highway Patrol, for comments regarding intrastate mutual aid. Colonel Klipfel provided written testimony, a copy of which is attached as Appendix C.

Colonel Klipfel testified in support of the proposed legislation relating to intrastate mutual aid. He said although law enforcement has worked together very well during emergency situations under existing mutual aid law, this proposed legislation will fulfill a need for agreements between first responders. Additionally, he said, this proposed legislation would assist first responders in working together and thereby save lives, prevent unnecessary congestion, and ensure agencies involved in responding to emergencies are eligible for receipt of Homeland Security Department funds.

In response to a question from Senator Bowman, Colonel Klipfel said the Intrastate Mutual Aid Committee has ensured the interested persons have had an opportunity to address the issue of intrastate mutual aid, as well as to comment on the proposed legislation. Mr. Friez said during the last year there have been training partnerships with the cities and counties and he views these partnerships as opportunities to train and exercise local communities in how to respond in cases of emergencies.

In response to a question from Senator Kelsh regarding whether North Dakota Century Code (NDCC) Section 44-08-20, relating to law enforcement mutual aid, would be duplicative under this proposed legislation, Mr. Friez said he is not certain but believes this proposed legislation would supplement existing law.

Chairman Kelsh called on Mr. Terry Traynor, North Dakota Association of Counties, for comments regarding the intrastate mutual aid topic. Mr. Traynor said he supports the concept of intrastate mutual aid

and the North Dakota Association of Counties will assist by educating member counties regarding intrastate mutual aid. He said the Intrastate Mutual Aid Committee was a great undertaking in which large numbers of entities participated. Intrastate mutual aid, he said, goes beyond fire and law enforcement, including a large range of actors.

Chairman Kelsh called on Mr. Jerry Hjelmstad, North Dakota League of Cities, for comments regarding the intrastate mutual aid topic. Mr. Hjelmstad testified in support of the proposed legislation. He said the purpose of the proposed intrastate mutual aid legislation is to fill in the gaps, not supersede any formalized mutual aid agreements that may exist. He said under the proposed legislation, local communities would retain control.

It was moved by Citizen Member Smestad, seconded by Citizen Member Malcomb, and carried on a voice vote that the Advisory Commission on Intergovernmental Relations support the concept of intrastate mutual aid.

DOCUMENT PRESERVATION FUND

Chairman Kelsh called on Ms. Ann Johnsrud, North Dakota County Recorders Association, for comments regarding the commission's document preservation fund bill draft [50069.0100]. Ms. Johnsrud testified in support of the bill draft. She said the bill draft removes the June 30, 2005, expiration date from NDCC Sections 11-18-05 and 11-18-22. She said the money being collected through the document preservation fee is currently and will continue to be used for document preservation.

It was moved by Representative Maragos, seconded by Senator Bowman, and carried on a roll call vote that the bill draft relating to continuation of the document preservation fund be approved and recommended to the Legislative Council. Representatives Kelsh and Maragos; Senator Bowman; and Citizen Members Bina, Malcomb, Montplaisir, and Smestad voted "aye." No negative votes were cast.

CONSOLIDATION OF COUNTY MILL LEVIES

At the request of Chairman Kelsh, commission counsel presented the bill draft [50155.0100] relating to consolidation of county mill levies. She said lines 11 through 14 on page 1 of the bill draft remove from the consolidated general fund the specific mill levies for the industrial development organization, county parks and recreation, library fund, Weed Board and weed control, handicapped persons, and weather modification. Additionally, she said, line 16 decreases the maximum general fund levy from 134 to 118 mills. She said the language regarding the limitations of increasing the mill levy are removed on lines 19 through 22.

Chairman Kelsh called on Mr. John Mittleider, North Dakota Farm Bureau, for comments regarding the consolidation of county mill levies bill draft. Mr. Mittleider provided written testimony, a copy of which is attached as Appendix D.

Mr. Mittleider said representatives of the North Dakota Farm Bureau have met with representatives of the North Dakota Association of Counties in order to discuss possible compromise solutions to the county mill levy consolidation issue; however, the parties have not come to an agreement. He said the North Dakota Farm Bureau would like to submit the following two amendments to the bill draft:

1. Place the issue of consolidation on the ballot before a county action consolidates mill levies.
2. Within this consolidation vote, allow voters to establish a general fund mill levy cap.

Mr. Mittleider said the primary concern of the North Dakota Farm Bureau is that the consolidated county mill levy law allows for significant tax increases without the vote of the people. Mr. Mittleider distributed a copy of the proposed amendments to the commission's bill draft, a copy of which is attached as Appendix E.

In response to a question from Citizen Member Nielson, Mr. Mittleider said the North Dakota Farm Bureau wants to retain as much local control as possible. He said this consolidated mill levy issue is not a matter of whether county commissioners should have authority to increase taxes but is a matter of whether local taxpayers should be making tax decisions. He said the consolidated county mill levy is a significant change in tax policy. He said the North Dakota Farm Bureau opposes consolidation of county mill levies unless there is a vote of the people for both the consolidation determination and the determination of the amount of the county mill levy cap.

In response to a question from Citizen Member Montplaisir, Mr. Mittleider said he is not certain which particular counties oppose consolidation of county mill levies.

Citizen Member Montplaisir said Cass County has had a consolidated county mill levy through home rule for several years.

Mr. Mittleider said in distinguishing the current bill draft to consolidate county mill levies from the ability to consolidate mill levies through home rule, the action of changing to home rule is voted on by the people, including consideration of whether consolidation is part of the home rule.

Chairman Kelsh called on Mr. Wade Williams, North Dakota Association of Counties, for comments regarding the consolidation of county mill levies bill draft. Mr. Williams said none of the association counties support the North Dakota Farm Bureau solution. He said the parties have tried to come to an agreement; however, this has not been possible.

Additionally, he said, the existing law and the bill draft allow for the vote of the people through a referral.

In response to a question from Senator Bowman, Mr. Williams said several counties are at the maximum for general fund levies. He said the bill draft would allow for a maximum general fund mill levy of 118 mills without a vote of the people. Additionally, he said, a number of small counties have attempted to change to home rule but have been unsuccessful because of the opposition by some elected county officials.

Senator Bowman said citizens do not want local government to grow more than the citizens can afford. He said some counties are growing and some counties are not growing.

Mr. Williams said the counties are seeking to model the county taxing system on the taxing system used by the state.

Citizen Member Montplaisir said Cass County has a general fund cap of 75 mills and is currently levying 65 mills, the same amount as when the consolidation began.

Senator Bowman said by allowing for an upfront vote of the people, it would avoid citizens having to go through a referral. Citizen Member Smestad said the concept of consolidation allows counties to use funds for more than just one specified purpose as is required under a nonconsolidated system.

Representative Kelsh said the commission considered most of these same issues last interim when the commission recommended the 2003 consolidation of county mill levies bill draft.

In response to a question from Representative Kelsh regarding the decrease of the mill cap from 134 to 118 mills, Mr. Traynor said in 2003 the actual total of all consolidated mill levies was 138; however, the parties agreed to putting 134 in the commission recommended bill draft. He said in the bill draft before the commission this interim, the decrease from 134 to 118 mills reflects the actual number of mills remaining in the consolidated general fund.

In response to a question from Senator Bowman, Mr. Traynor said the total mill levies of the specific mill levies being removed under the bill draft are approximately 21 mills.

In response to a question from Citizen Member Nielson, Mr. Traynor said in 2003 the bill draft recommended by the commission did not include the consumer price index language, which was added during the legislative session.

Mr. Traynor said in considering how to address the consumer price index language that is in current law, the association did consider changing the consumer price index language to be more workable; however, ultimately the association supported removing the consumer price index language entirely. He said under the commission bill draft, counties are given the authority to decrease taxes without being penalized in future years.

In response to a question from Representative Kelsh, Mr. Traynor said even if this bill draft is not successful during the legislative session, counties will still have the authority to consolidate without a vote of the people.

Representative Maragos said he resists the proposed amendments by the North Dakota Farm Bureau.

It was moved by Citizen Member Nielson, seconded by Citizen Member Smestad, and carried on a roll call vote that the bill draft relating to consolidation of county mill levies be approved and recommended to the Legislative Council. Representatives Kelsh and Maragos and Citizen Members Bina, Montplaisir, Nielson, and Smestad voted "aye." Senator Bowman and Citizen Member Malcomb voted "nay."

DELINQUENT PROPERTY TAXES

Chairman Kelsh called on commission counsel to present the bill draft [50156.0100] relating to delinquent property taxes. She said the bill draft decreases from approximately five years to approximately three years the period of time in which foreclosure will take place for delinquent property taxes and also allows county commissioners to waive all or part of the penalties and interest on delinquent real estate taxes if the board of county commissioners determines the reduced period for foreclosure of tax liens creates a hardship for taxpayers. She said the waiver of penalty and interest would be effective through October 1, 2009, and the decrease in the period of foreclosure would be effective for taxable years beginning after December 31, 2004, with the property tax proceedings relating to property taxes due or delinquent for any taxable year prior to 2005 being subject to the provisions of law that were in effect on December 31, 2004.

Representative Kelsh said the primary purpose for decreasing from five to three years the period of time in which foreclosure for delinquent property taxes will take place is that the longer a taxpayer is delinquent on property taxes, the more difficult it is for that taxpayer to get out of that situation.

Citizen Member Montplaisir said there are basically two types of delinquent property tax property owners:

1. The professional who uses the county as a bank with 12 percent interest.
2. The individual who does not have the necessary money available to pay property taxes.

Chairman Kelsh called on Mr. Traynor for comments regarding the delinquent property tax foreclosure bill draft. Mr. Traynor provided written testimony, a copy of which is attached as Appendix F.

Mr. Traynor testified in support of the delinquent property tax foreclosure bill draft stating that the current law provides for an abnormally long period in which schools, counties, cities, and other local

institutions are deprived of the timely use of tax dollars, thereby placing a greater burden on those taxpayers who do pay their taxes in a timely manner.

Chairman Kelsh called on Ms. Marcy Dickerson, Tax Commissioner's office, for comments regarding the delinquent property tax foreclosure bill draft. Ms. Dickerson testified neither in support of nor opposition to the bill draft but did raise the question of whether the bill draft allows a county to waive penalty and interest in a uniform manner or on a case-by-case basis.

Citizen Member Nielson said her initial interpretation of the bill draft was that a county would make a determination whether to waive penalty and interest and then apply that across the board to individuals under the terms set by the county. She said she suggests the commission consider removing the use of the term hardship.

Senator Bowman questioned how hardship might be determined by the counties.

Citizen Member Montplaisir said it was not intended that the bill draft allow counties to provide waivers on a case-by-case basis. Currently, he said, counties deal with requests for waiver on a case-by-case basis but this is reserved for situations in which there was an error made by the county.

It was moved by Representative Maragos and seconded by Citizen Member Nielson that the waiver of penalty and interest language be removed from the delinquent property tax foreclosure bill draft.

Citizen Member Malcomb said he supports the issue of amnesty as it applies to individuals who do not have the funds necessary to pay taxes. Additionally, he said, he does not support the one size fits all approach to government. He said this penalty and interest waiver authority would allow government to be more responsive to the needs of the people.

Citizen Member Nielson said she supports the penalty and interest waiver concept but the bill draft language needs to be drafted in a manner that is clear that the counties may provide categorical amnesty and not amnesty on a case-by-case basis.

Representative Maragos expressed his willingness to withdraw his motion now that the commission has had an opportunity to discuss this concept.

The motion failed on a voice vote.

It was moved by Representative Maragos, seconded by Citizen Member Nielson, and carried on a roll call vote that the bill draft, as amended, to provide for categorical waiver of penalty and interest in order to assist in the transition to a shorter period of property tax foreclosure be approved and recommended to the Legislative Council. Representatives Kelsh and Maragos; Senator Bowman; and Citizen Members Bina, Malcomb, Montplaisir, Nielson, and Smestad voted "aye." No negative votes were cast.

MOTOR VEHICLE BRANCH OFFICE PILOT PROJECT

Chairman Kelsh called on Mr. Keith Magnusson, Department of Transportation, for comments regarding the status of the motor vehicle branch office pilot project. Mr. Magnusson said the department is still working with the Governor in establishing a comprehensive strategic plan that includes motor vehicle branch offices. However, he said, even with the upcoming expiration of the pilot project, the department anticipates the continued existence of current branch offices located in treasurers' offices and supports adding three county treasurer-located branch offices in the next two years.

In response to a question from Representative Kelsh, Mr. Magnusson said that unlike several other states, North Dakota does not charge an additional fee for computer registration because this computerized registration is viewed as a customer service issue.

Mr. Traynor said although the motor vehicle branch office pilot project will be sunseting in 2005, he is excited that this program will continue without the law on the books. He said the association does not have any plans at this point to pursue introduction of a bill to remove the sunset provision.

In response to a question from Citizen Member Malcomb, Mr. Magnusson said it is likely that additional county treasurers may become interested in pursuing a motor vehicle branch office.

Senator Bowman said he is very happy with the results of the motor vehicle branch office pilot project.

It was moved by Citizen Member Smestad, seconded by Representative Maragos, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the commission and to present the report and recommended bill drafts to the Legislative Council.

Chairman Kelsh thanked the commission members for their hard work during the interim and said there are no plans to hold additional meetings during the remainder of the interim.

No further business remaining, Chairman Kelsh adjourned the meeting at 11:45 a.m.

Jennifer S. N. Clark
Commission Counsel

ATTACH:6