

1999 HOUSE EDUCATION

HB 1192

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1192

House Education Committee

Conference Committee

Hearing Date 1-20-99

Tape Number	Side A	Side B	Meter #
#1	X		27.7 to end
#1		x	0.1 to 1.9
#1		x	38.2 to the end
Committee Clerk Signature <i>Joan Diers</i>			

Minutes:

Chairman R. Kelsch : Called the committee meeting to order. Those present: Chairman R.

Kelsch , Vice-Chair Drovdal , Rep Brandenburg , Rep Brusegaard , Rep. Haas , Rep. Johnson , Rep. Nelson , Rep. Nottestad , Rep. L. Thoreson , Rep. Grumbo , Rep. Hanson , Rep. Lundgren , Rep. Mueller , Rep. Nowatzki , Rep. Solberg . Opened the hearing on HB 1192. The clerk heard the title.

Rep Hoffner: Introduced HB 1192. The bill deals with law firm who provide legal services to the school district, you shall not lobby for tobacco, smokless tobacco or alcohol beverages.

Chairman R. Kelsch : Currently don't school boards have the authority right now? An attorney applies for the job representing the school board. IF the board does not want an attorney for whatever reason, they don't hire them.

Hoffner: I think I understand what your saying, yes.

Chairman R. Kelsch : Is this piece of legislation necessary, when a school board can already determine who they want for an attorney?

Hoffner: I'm not sure I follow the question, I am citing the one example of last session. This individual was a lobbyist and representing a school board.

Chairman R. Kelsch : I'm not making it clear, I know of a school board that wouldn't hire attorney A, the reason behind it was, their law firm represented an alcohol company. That was the school boards choice. Another school board may decide they would hire that attorney, this is the best person for the job. That attorney is not a role model for the school. That is their choice. That is local control.

Hoffner: Yes, that is correct.

Rep Brandenburg : Will we be telling the school boards what kind of lawyer they can hire?

Hoffner: To some extent. They could not hire a registered lobbyist.

Rep. Haas : I see this as a direct interference with the authority of the school board. Further it is trying to regulate the scope of a legal practice of an individual or law firm.

Hoffner: I have stated my position.

Rep. Haas : Are you saying that a school board should not hire a superintendent that smokes cigars?

Hoffner: No I'm not. I think we are getting a little off the subject.

Vice-Chair Drovdal : I see some problems where we have counties that don't have a lot of attorneys. Attorneys for role models whether they drink or smoke.

Hoffner: This goes way beyond that. We are talking about someone representing the company.

Rep. Nelson : Under the situations that we are talking about, the attorney that would be hired by the district, would be retained for policy decisions rather than contact with students?

Hoffner: They meet directly with students. They may go before the student body and explain.

Rep. Nelson : Wouldn't the burden of proof be on the student to go through the list of registered lobbyists in the state. Why would they even care? Why are these lobbyists any different from the other listed lobbyists, what about the federal lobbyist? Where does it start and stop.

Hoffner: They do care.

Vice-Chair Drovdal : Would this also include all members of the firm? Some firms lawyers only share a common building and they have nothing to do with one another. This would exclude the whole firm. Isn't this going a little too far?

Hoffner: The money all comes into the law firm, so it is a profit for the whole organization. I thought about that, and think it should be for the whole firm.

Vice-Chair Drovdal : Following that idea, that is dirty money and the whole firm is contaminated our states coffers get dollars from alcohol and cigarettes, therefore that is dirty money and that goes into our general fund. So maybe we shouldn't sent any general fund out to the schools. That is carrying it a long ways, but that is what you are saying.

Hoffner: I think we are carrying beyond reasonableness.

Chairman R. Kelsch : Anyone else who wishes to speak in support of HB 1192? Anyone who wishes to appear in opposition of HB 1192?

Gary Thune: If the bill is passed, it would greatly affect by law practice and that of my nine partners. I appear in opposition of this legislation. I represent the North Dakota High School Activities Association for the past five years, I represent the North Dakota School board

Association for twenty years. I represent public school systems across the state and have done so for twenty four years. Those districts include the Bismarck School District which two years ago held a fifteen hour hearing and terminated Rep Hoffner's employment. I was their legal counsel. We prevailed, and the trial court, that case is now on appeal to the North Dakota Supreme Court. I would like to believe that this is just a coincidence and it happens that I am a registered lobbyist for the smokless tobacco council in the 1997 session. I was registered but my partner was the lobbyist for that session, our firm has lobbied for many sessions for many companies. I hope that their positions aren't in "conflict" with what school children might see to be a problem. Let me talk about the role model conflict of interest of this bill. Is it a conflict of interest to represent tobacco companies and school districts? The Smokless Tobacco Council five years ago spear headed a program, that says we card all young people who come in to buy tobacco products because it is illegal for you to have it. Role models, I use to teach school, there are some real role models there. If you have teachers, coaches, administrators who use alcohol and smokless tobacco is there a conflict of interest then because we have smoke free schools? School board members get elected to the board because they care about kids. But if they use these products, do they have a conflict of interest? Legislators if you vote wrong for this bill, should you be not be permitted to run for the legislature in the next session because of the conflict of interest or you are not a good role model for students? If goes too far. I oppose this bill. I urge a do not pass.

Rep. L. Thoreson : You presive your role as a lobbyist in a positive way in an attempt to get the message out to the students

Thune: The company that I represent thats that position.

Vice-Chair Drovdal : Our legislators have to be careful of conflict of interest.

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Thune: Thank you

Richard Ott: North Dakota School Board Association. We oppose this bill, we feel it limits the rights of the school district to make a choice for legal representation. We don't feel the it should be legislated who we hire. The board already has the latatude to hire whom they want.

Chairman R. Kelsch : Anyone else who wishes to appear in oppositon of HB 1192? I am going to keep the hearing open as Sandi Tabor from the State Bar Association is going to give testimony. No other people, we will leave the hearing open.

Chairman R. Kelsch : Ask Sandi Tabor to come forward.

Sandi Tabor: On behalf of the State Bar Association. written testimony attached. Speaking in opposition of HB 1192.

Chairman R. Kelsch : Any further questions. Close the hearing on HB 1192.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1192

House Education Committee

Conference Committee

Hearing Date 1-25-99

Tape Number	Side A	Side B	Meter #
#2	x		11.3 to 14.6
Committee Clerk Signature <i>Joan Diers</i>			

Minutes:

Chairman R. Kelsch , Vice-Chair Drovdal , Rep Brandenburg , Rep Brusegaard , Rep. Haas ,
Rep. Johnson , Rep. Nelson , Rep. Nottestad , Rep. L. Thoreson , Rep. Grumbo , Rep. Hanson ,
Rep. Lundgren , Rep. Mueller , Rep. Nowatzki , Rep. Solberg - present.

Chairman R. Kelsch : open the hearing on HB 1192. It has been moved by Rep. L. Thoreson for
a DO NOT PASS, seconded by Rep. Nelson. Committee discussion. Seeing none. The clerk will
call the roll on HB 1192. The motion PASSED as a DO NOT PASS 12 YES 3 NO 0 Absent
Floor assignment Rep Haas.

Date: 1-25-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1192

House Education Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Thoreson Seconded By Nelson

Representatives	Yes	No	Representatives	Yes	No
Rep. ReaAnn Kelsch-Chairperson	✓		Rep. Dorvan Solberg	✓	
Rep. David Drovdal-Vice Chair	✓				
Rep. Michael D. Brandenburg	✓				
Rep. Thomas T. Brusegaard	✓				
Rep. C. B. Haas	✓				
Rep. Dennis E. Johnson	✓				
Rep. Jon O. Nelson	✓				
Rep. Darrell D. Nottestad	✓				
Rep. Laurel Thoreson	✓				
Rep. Howard Grumbo		✓			
Rep. Lyle Hanson		✓			
Rep. Deb Lundgren	✓				
Rep. Phillip Mueller	✓				
Rep. Robert E. Nowatzki		✓			

Total (Yes) 12 No 3

Absent 0

Floor Assignment Haas

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 25, 1999 4:18 p.m.

Module No: HR-15-1146
Carrier: Haas
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1192: Education Committee (Rep. R. Kelsch, Chairman) recommends **DO NOT PASS**
(12 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1192 was placed on the
Eleventh order on the calendar.

1999 TESTIMONY

HB 1192



State Bar Association of North Dakota

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Testimony of Sandi Tabor

Executive Director

State Bar Association of North Dakota

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Executive Director

Sandi Tabor

HB 1192

I am here today to testify in opposition to HB 1192. In both the North Dakota and United States Constitution there are provisions which prohibit a legislative body from passing bills to punish an individual or easily identifiable group of individuals without giving them a hearing. These types of bills are referred to as bills of attainder. In North Dakota this prohibition is covered in Article I, section 18 which reads as follows:

No bill of attainder, ex post facto law or law impairing the obligations of contracts shall ever be passed.

There are three elements to a bill of attainder: 1) a punishment; 2) no judicial proceeding; and 3) specificity in identification of the individual(s) affected. Originally in the United States Constitution the provision was included to prohibit a legislative enactment pronouncing a person guilty of a crime, without trial, and inflicting the punishment of death. The concept has evolved over the years, however, to one which basically prevents legislators or other governing entities from punishing citizens without the benefit of a hearing before a court, i.e. attempting to circumvent the third branch of government.

The Association is concerned that HB 1192 is a bill of attainder. There is an easily identifiable individual who will be subject to the ramifications of the bill - Gary Thune is the only attorney in the state who represents school boards and who belongs to a law firm that has members registered as lobbyists for the tobacco industry. It contains a fairly significant punishment, i.e. it prohibits Mr. Thune from pursuing his livelihood unless he resigns from his law firm, or unless the law firm resigns as counsel to a long-standing client. And if passed by the legislature, it will certainly not include an hearing before a court.

Now for a piece of legislation to constitutionally fail as a bill of attainder, it must be shown that the impact is not simply incidental to a necessary regulation. I am sure Rep. Hoffner provided some explanation why he

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believes this would be a necessary regulation. Unfortunately, the fact that Mr. Thune successfully represented the Bismarck school district in a case against Rep. Hoffner can not be overlooked. This bill has every appearance of retribution pure and simple. This bill includes nonjudicial punishment without a judicial proceeding.

If this bill were to pass, I believe the circumstances outlined above would warrant a finding that the legislation violates the bill of attainder clause of the Constitution. Because it is so clearly a personal attack against Mr. Thune, based upon a bitter legal battle, we asking you for a unanimous **do not pass** vote.