

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Thursday, September 28, 2000
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Elroy N. Lindaas, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Elroy N. Lindaas, Tim Mathern, Darlene Watne; Citizen Members Randy Bina, Bob Frantsvog, Les Korgel, Ken Yantes

Members absent: Representative Earl Rennerfeldt; Citizen Members Mel Jahner, Maxine Olson-Hill; Governor Edward T. Schafer

Others present: Bev Nielson, North Dakota School Boards Association, Bismarck

Jerry Hjelmstad, North Dakota League of Cities, Bismarck

Murray G. Sagsveen, State Department of Health, Bismarck

Barry Hasti, Charles Krueger; Tax Department, Bismarck

David Peske, North Dakota Medical Association, Bismarck

Wade Williams, North Dakota Association of Counties, Jamestown

Sue Anderson, Larry Maslowski; Insurance Department, Bismarck

Doug Friez, North Dakota Emergency Management, Bismarck

It was moved by Senator Mathern, seconded by Citizen Member Korgel, and carried on a voice vote that the minutes of the June 30, 2000, meeting be approved as distributed.

TOBACCO EDUCATION AND CESSATION

Chairman Lindaas called on commission counsel for presentation of the public employee tobacco education and cessation bill draft. Commission counsel said this bill draft differs from the version reviewed by the committee at the previous meeting in that the city and county public employees tobacco education and cessation program is not a part of the community health trust fund. She said the program is funded by one percent of the tobacco settlement trust fund--one-half percent from the common schools trust fund and one-half percent from the water development trust fund. She said under this bill draft, the allocation for the community health trust fund remains at 10 percent of the tobacco settlement trust fund.

In response to a question from Senator Lindaas, commission counsel said the appropriation amount of

\$521,828 was originally chosen because it is 10 percent of the community health trust fund.

Citizen Member Frantsvog said he would prefer that the commission consider retaining the tobacco settlement trust fund allocations established by the Legislative Assembly. He said the State Department of Health is proposing using the community health trust fund money for a healthy schools program, a healthy families program, and a healthy communities program. He said he would prefer permissive language that would allow the Attorney General to make money available to communities for the purpose of employee tobacco education and cessation programs.

In response to a question from Senator Mathern, Citizen Member Frantsvog said during the next legislative session there will be a variety of attempts to change the tobacco settlement trust fund allocation. He said it might be better for the cities and counties to pursue funding for an employee tobacco education and cessation program through alternative funding sources.

Senator Lindaas said he likes the bill draft because it clarifies how a city and county public employees tobacco education and cessation program would be funded and designates a set amount of money for funding these programs.

Chairman Lindaas called on Mr. Murray G. Sagsveen, State Health Officer, State Department of Health, for comments regarding the city and county public employees tobacco education and cessation bill draft. Mr. Sagsveen provided written testimony, a copy of which is on file in the Legislative Council office.

Mr. Sagsveen said although the Legislative Assembly did not appropriate any dollars from the community health trust fund for the current biennium, the Legislative Council's interim Budget Committee on Health Care has been studying the issue of use of the funds from the community health trust fund. He said he has submitted a recommendation to that committee concerning a comprehensive community-based program that would include \$2 million of funding for the healthy schools program, \$2 million of funding for the healthy families program, and \$1 million of funding for the healthy communities program. Additionally, he said, he has recommended

to that committee that the Legislative Assembly reserve the accumulated principal in the community health trust fund for the purposes of providing an appropriate cash flow to the department to fund a community health grant program and to provide an appropriation to the department for public health contingencies if the Governor declares an emergency. He said the committee voted to support the recommendations with minor modifications. He said the committee also voted to augment the revenue to the community health trust fund by returning community health trust fund interest to the fund and by depositing water development trust fund interest in the community health trust fund.

Mr. Sagsveen said although he recommended to the Public Employees Retirement System Board that the state health plan include tobacco cessation components, the board voted not to include the components in the recommended health plan for the next biennium.

Mr. Sagsveen said if the commission's city and county public employees tobacco education and cessation bill draft is enacted, the State Department of Health could manage such a program in coordination with the proposed community health trust fund grant program.

In response to a question from Senator Mathern regarding whether the community health trust fund program will provide cities and counties the resources to implement employee tobacco education and cessation programs, Mr. Sagsveen said the program will make funding available to communities but will not specify the use of the funding for public employees. He said because "one size does not fit all," the program will leave the specific use of the community health trust fund to local control, and cities and counties will be permitted to implement a public employee education and cessation program similar to the program provided under the commission's bill draft.

In response to Senator Lindaas's concern that some people perceive the tobacco settlement trust funds are not being used for tobacco-related issues, Mr. Sagsveen said he recognizes some people are opposed to the allocation formula.

In response to a question from Senator Mathern, Mr. Sagsveen said he testified in support of adding interest moneys to the community health trust fund. He said the addition of interest moneys will not change the actual allocation of tobacco settlement moneys. He said he is not certain whether the Governor officially approved the interest transfer, but Mr. Sagsveen said he thinks the interest transfer will be consistent with the Governor's program.

In response to a question from Senator Mathern regarding whether the cities and counties actually support the bill draft, Citizen Member Frantsvog said he is interested in hearing Senator Mathern's suggested changes to the bill draft.

Senator Mathern said his suggested changes are to return the allocation of the tobacco settlement trust funds to the original three funds in the original percentage of 10 percent, 45 percent, and 45 percent; to move the tobacco education and cessation program language into the community health trust fund portion of the bill draft; and to incorporate language that is consistent with the Budget Committee on Health Care bill draft moving interest to the community health trust fund.

Citizen Member Korgel said he supports Senator Mathern's plan and approves of defining the use of the community health trust fund moneys to include city and county tobacco education and cessation programs.

Senator Watne questioned why the bill draft limits tobacco education and cessation funding to city and county employees. She said city and county employees are not more important than other community members. Additionally, she said, she has trust in how the State Department of Health will use the moneys allocated to the community health trust fund.

Senator Mathern said he agrees that all citizens deserve tobacco education and cessation services; however, under this bill draft, in order to receive funding, cities and counties will need to establish that they are willing to provide matching funds for the employee programs.

Citizen Member Yantes said next session there will be modifications in the tobacco settlement allocation, and he supports providing services to cities and counties, including the bill draft changes proposed by Senator Mathern.

Citizen Member Frantsvog said he supports Senator Mathern's proposed changes.

It was moved by Senator Mathern, seconded by Citizen Member Yantes, and carried on a roll call vote that the Legislative Council be requested to prepare a new version of the city and county public employees tobacco education and cessation bill draft which returns the allocation to the original allocation of 10 percent, 45 percent, and 45 percent; inserts the tobacco education and cessation program language into the section of law addressing the community health trust fund; and implements the transfer of interest language provided in the interim Budget Committee on Health Care bill draft. Senators Lindaas, Mathern, and Watne and Citizen Members Bina, Frantsvog, Korgel, and Yantes voted "aye." No negative votes were cast.

It was moved by Citizen Member Frantsvog, seconded by Senator Mathern, and carried on a roll call vote that the bill draft, as amended, relating to city and county public employees tobacco education and cessation, be approved and recommended to the Legislative Council. Senators Lindaas, Mathern, and Watne and Citizen

Members Bina, Frantsvog, Korgel, and Yantes voted "aye." No negative votes were cast.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS MEMBERSHIP

The commission reviewed a bill draft relating to Advisory Commission on Intergovernmental Relations membership. Commission counsel said one thing the commission should be aware of is that if the commission is increased from 11 to 12 members, the commission will be composed of an even number of members.

In response to a question from Senator Mathern regarding whether cities and counties require representation of two members, Citizen Member Korgel said by having two-member representation, for each the city and the county, a variety of voices are heard.

Senator Watne said her understanding is that the membership of the Advisory Commission on Intergovernmental Relations is intended to bring taxing entities to the table.

It was moved by Senator Mathern and seconded by Citizen Member Bina that the bill draft relating to the Advisory Commission on Intergovernmental Relations membership be approved and recommended to the Legislative Council.

Chairman Lindaas called on Ms. Bev Nielson, North Dakota School Boards Association, for comments regarding the bill draft. She said she is in support of adding North Dakota School Boards Association membership to the Advisory Commission on Intergovernmental Relations. She said school districts levy \$540 million in taxes each biennium. Additionally, she said, the issues addressed by the Advisory Commission on Intergovernmental Relations seem applicable to schools and by providing school board representation on the commission, there may be an increase in communication at the local level. She said the North Dakota School Boards Association is not currently represented at the state level as the Department of Public Instruction does not always have the same agenda as the school boards.

Citizen Member Yantes said although he was initially opposed to the bill draft, he now believes that it would be a good idea to have the school boards brought to the table and included in the membership for the Advisory Commission on Intergovernmental Relations.

The motion carried on a roll call vote. Senators Lindaas, Mathern, and Watne and Citizen Members Bina, Frantsvog, Korgel, and Yantes voted "aye." No negative votes were cast.

PROPERTY TAX EXEMPTION

Chairman Lindaas presented a study resolution draft calling for a study of property tax exemptions.

Senator Lindaas said the history behind the study resolution draft is that nursing homes have been known to branch out to sponsor a variety of services that is something less than nursing home services. He said at the local level there is uncertainty whether these services sponsored by nursing homes should be taxed, or whether the entities should be considered charitable organizations. In reviewing the study resolution draft, he said, the resolution may be too broad, and the commission may want to consider narrowing the scope of the study resolution draft.

In response to a question from Senator Watne, commission counsel said the study resolution draft is drafted to address North Dakota Century Code (NDCC) Section 57-02-08(8), which provides "All buildings belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions, used wholly or in part for public charity" She said there are a variety of court cases and Attorney General opinions attempting to interpret this subsection.

Senator Watne said the issue of taxes as they apply to charitable institutions extends beyond property tax and includes issues such as the payment of sales tax.

Senator Mathern said the commission should narrow the study resolution draft to focus on the issue of property tax and charitable organizations that provide health and lodging services.

Chairman Lindaas called on Mr. Barry Hasti, Tax Department, for comments regarding the resolution draft. He said there is not a statutory definition of "charity" and therefore the department looks to Attorney General opinions and court cases to define the term. He said it would be of great service to the Tax Department and to tax assessors to define "charity." In a recent North Dakota Supreme Court case, he said, the court tried to address the definition of "charitable," and ultimately decided that the organization in question was required to pay property tax.

In response to a question from Senator Mathern, Mr. Hasti said in the recent Supreme Court case, although it was ultimately determined the organization needed to pay property tax, there are similar facilities across the state which are not paying property tax; therefore, there does appear to be a lack of uniformity in how the law is applied.

Senator Mathern suggested narrowing the resolution draft to institutions that provide housing and health services.

Mr. Hasti said there is concern regarding hospitals because hospitals provide a variety of services beyond acute care services. He said the issue of charity is a broad issue, and it may be helpful to deal with one small portion at a time.

Chairman Lindaas said the commission does not have time to study the issue now; however, it might be appropriate to study the issue during the next

legislative session or during the next interim. He said if the commission narrows the study resolution draft, there is a possibility that during the legislative session special interest groups will want to have the resolution amended to include their particular issues.

Senator Mathern suggested the following changes be made to the study resolution draft--include a whereas clause that acknowledges the positive things accomplished by charitable institutions; provide that the study focuses on property tax exemptions for charitable organizations that provide a combination of health and housing services; and instead of referring to "charitable" refer to "institutions of public charity" in order to more closely follow the language of NDCC Section 57-20-08(8).

In response to a question from Senator Lindaas regarding low-income housing, Mr. Hasti said generally speaking, homeless shelters are tax exempt; privately owned, low-income housing projects are typically not tax exempt; and federally owned, low-income housing projects are tax exempt.

Senator Watne said frequently some of the most valuable property in cities is tax exempt due to use and ownership by charitable institutions; however, these charitable institutions receive all of the benefits of being part of a city.

Senator Mathern said as currently drafted, the study resolution might address hospitals, but with his proposed changes, the resolution draft would be limited to those institutions that provide a combination of housing and health services.

Senator Lindaas said it is important to be clear that the intent of the study resolution draft is not to attack any organization but instead to gain uniformity and understanding across the state.

It was moved by Senator Mathern, seconded by Senator Watne, and carried on a roll call vote that the Legislative Council staff be requested to draft a new version of the property tax exemption study resolution which incorporates Senator Mathern's proposed changes. Senators Lindaas, Mathern, and Watne and Citizen Members Bina, Frantsvog, Korgel, and Yantes voted "aye." No negative votes were cast.

It was moved by Citizen Member Korgel, seconded by Citizen Member Yantes, and carried on a roll call vote that the study resolution draft, as amended, relating to the study of property tax exemptions be approved and recommended to the Legislative Council. Senators Lindaas, Mathern, and Watne and Citizen Members Bina, Frantsvog, Korgel, and Yantes voted "aye." No negative votes were cast.

MUNICIPAL COURT FINE COLLECTION

Chairman Lindaas called on Citizen Member Frantsvog for comments regarding the problems cities are having in collecting municipal court fines. He said the information provided by Mr. Bob Bennett, Assistant Attorney General, at the previous commission

meeting provided a variety of collection alternatives currently available for cities.

Citizen Member Frantsvog said perhaps the commission should do something to improve communication between all the interested persons.

The commission reviewed the responses to the North Dakota League of Cities survey regarding collection of municipal court fees. A copy of the document containing a summary of the responses is on file in the Legislative Council office.

It was moved by Senator Mathern, seconded by Senator Watne, and carried on a voice vote that subject to Legislative Council chairman approval, the Legislative Council staff be requested to work with Senator Lindaas and Citizen Member Frantsvog to prepare a letter encouraging communication between parties involved in collecting municipal court fines.

DISASTER RELIEF FUND

Chairman Lindaas called on commission counsel to present the second version of a bill draft relating to a disaster relief fund. Commission counsel said the primary differences between this version of the bill draft and the version reviewed by the commission at the previous meeting are that instead of funding the disaster relief fund from a set dollar amount surcharge on property insurance policies, this version of the bill draft provides for a one percent premium tax on property insurance policies; instead of providing for financial relief to taxing districts, this version of the bill draft provides a tax credit for the property owner; the period of time between which a disaster occurs and a person may apply for assistance under the bill draft is decreased from five years to two years; and under this version of the bill draft, an applicant for assistance is required to show loss of use of the property.

In response to a question from Senator Mathern regarding whether on page 2, line 23, the word "or" could be replaced with the word "and," commission counsel said the change could be made, but the change would be substantive in requiring that an applicant for assistance would need to establish that both a state emergency and federal emergency have been declared.

Chairman Lindaas called on Mr. Doug Friez, North Dakota Emergency Management, for comments regarding the bill draft. Mr. Friez said typically, emergencies and disasters are first declared by local governing bodies, then an emergency disaster may be declared by state government, and finally a disaster or emergency may be declared by the federal government. He said generally the state declaration of disaster emergency is required before a federal declaration will be made; however, there are exceptions.

Senator Mathern proposed the bill draft be changed to require that a declaration of a state and federal disaster be required, and he proposed that a

county declaration of emergency or disaster also be required to be declared. He said it is important to have county support for this program to work.

Mr. Friez said if the commission adds the county emergency or disaster declaration requirement, the commission may want to consider addressing home rule cities declarations of disasters or emergencies.

In response to a question from Citizen Member Frantsvog regarding the requirement that a disaster emergency result in a loss in the use of the real property, commission counsel said the term "loss of use" may be subject to interpretation.

Senator Watne said under the bill draft, a county that provides a disaster relief property tax credit would not receive reimbursement from the state until the following year. She said counties cannot afford this type of loss for a one-year period.

In response to a question from Senator Mathern, commission counsel said there may be possible problems under the bill draft in that there is a set amount in the fund, and counties may provide tax credits exceeding the amount in the fund.

Mr. Hasti said since the bill draft is based in part on the homestead tax credit, under the homestead tax credit, money is paid to counties on a first-come, first-served basis and is not prorated to counties.

In response to a question from Citizen Member Korgel, Mr. Hasti said if there are inadequate funds at the state level, a county cannot go back and get reimbursement from property owners. It is not clear under the bill draft whether the amount of the property tax credit is based on the severity or length of time of loss to the property.

Senator Watne questioned if it is appropriate for all property owners to receive a property tax credit under the bill draft. She said some property owners do not own the property as residents but instead own the property as an investment.

Mr. Hasti said in the case of property damage, the tax system should result in a decrease in the amount of the property tax assessment to reflect the loss; however, in that case, other property owners in the district experience an increased burden.

Chairman Lindaas called on Mr. Larry Maslowski, Insurance Department, for comments regarding the bill draft. He said the estimated amount of money collected by the premium tax would be \$1.2 million per year.

Senator Mathern proposed amending the bill draft and then not approving the bill draft but instead drafting another version of the bill draft which only deals with disaster relief property tax credit. Senator Mathern proposed the bill draft be amended to provide that the Insurance Commissioner collect the disaster relief tax from insurance companies instead of having the Tax Commissioner collect these taxes; provide that before June 1, 2002, and each year following, a real property owner may apply to the county auditor for disaster relief property tax credit;

require that in order to be eligible for the disaster relief property tax credit, the county, state, and federal government declare a disaster or emergency; in order to be eligible for a disaster relief property tax credit the disaster or emergency result in a loss in the valuation of the real property; allow for a graduated property tax credit; provide that counties be reimbursed on a prorated amount based on the amount of money in the disaster relief fund; and provide that the Insurance Commissioner stop collecting the premium taxes if the fund reaches \$10 million and that the Insurance Commissioner resume collecting taxes if the fund goes below \$3 million.

It was moved by Senator Mathern, seconded by Citizen Member Yantes, and carried on a roll call vote that the Legislative Council be requested to prepare a new version of the disaster relief fund bill draft to incorporate Senator Mathern's proposed changes. Senators Lindaas, Mathern, and Watne and Citizen Members Bina, Frantsvog, Korgel, and Yantes voted "aye." No negative votes were cast.

It was moved by Senator Mathern, seconded by Citizen Member Yantes, and carried on a roll call vote that the Legislative Council be requested to prepare a property tax credit bill draft based on the commission's disaster relief fund bill draft, as amended, but without Sections 1 and 3. Senators Lindaas and Mathern and Citizen Members Bina, Korgel, and Yantes voted "aye." Senator Watne and Citizen Member Frantsvog voted "nay."

It was moved by Senator Mathern and seconded by Senator Yantes that the property tax credit bill draft be approved and recommended to the Legislative Council.

Senator Watne said the bill draft does not provide a solution to the problem.

Senator Mathern said he agrees with Senator Watne, but this issue deserves consideration. He said the federal government will be providing less and less federal assistance and the state will be taking more responsibility. He said the property tax credit bill draft is a step in the right direction.

Citizen Member Yantes said during the next interim, he will pursue this issue and will use this commission's work as a foundation.

The motion failed on a roll call vote. Senator Mathern and Citizen Members Bina and Yantes voted "aye." Senators Lindaas and Watne and Citizen Members Frantsvog and Korgel voted "nay."

MILL LEVY CONSOLIDATION

Chairman Lindaas called on Mr. Steve Neu, Legislative Chair, North Dakota Recreation and Park Association, for presentation of a bill draft to consolidate park district mill levies. Mr. Neu said Senator Lindaas agreed to work with his association and requested the Legislative Council prepare a bill draft consolidating park district mill levies. Mr. Neu provided written

testimony, a copy of which is on file in the Legislative Council office.

Mr. Neu said in 1997, the Advisory Commission on Intergovernmental Relations pursued a bill draft that consolidated park district, city, and county mill levies. He said the version before the committee today is based on this bill draft; however, it is limited to park districts.

Mr. Neu said in reviewing the current available mill levies, there are more than 88 possible mills, both restricted and unrestricted for general political subdivisions to specific park district operations. Mr. Neu said the mills can be divided into five basic operating groups--general operating, bonds, personnel, judgment, and others. Additionally, he said, there are recreation and forestry levies allowed to cities and recreation levies allowed to school districts, but these levies are not considered in this bill draft.

Mr. Neu said in reviewing the general operating group of levies, the general operating mill levies total 41 mills; and therefore a total of 41 mills could be established as the cap for general park district operations; the bonds group of levies is comprised of development bonds and special assessments; the personnel group of levies is comprised of employee pension and Social Security; the judgments group of levies includes injury judgments and injury judgment claims; and the other group of levies includes a four-mill municipal airport levy, a four-mill airport authority, and a four-mill railroad levy. He said the category of other mills could be deleted from the park district mill levies and reduce the total allowable mills by 12 mills since there is no real use or relevance to park districts. However, he said, although two park districts are levying for airport purposes, no district is currently levying for railroad purposes.

Mr. Neu said the additional discussion for consideration of possible consolidation is growth and the topics for growth include increasing operating mills to provide an opportunity for a community to add operating mills by majority vote up to the cap of mills provided in general operating and allowable growth rate, which would provide an allowable growth rate utilizing the consumer price index by resolution of the local park board. He said for additional mechanics, the community that does have growth of more than the consumer price index in taxable valuation would not be able to grow by the consumer price index plus their growth amount and that community could only use one method. He said under the bill draft the allowable growth rate is also tied, as a safeguard, to a statewide average which means the average number of mills levied for general fund purposes by park districts in cities with a population of 250 or more. He said the base is proposed to be 98 percent of the statewide average, and in reviewing this base the statewide average for communities over 250 in 1995 was 17.21 general operating mills, 98 percent of the 1995 average was 16.86 operating mills, and the

statewide average in 1999 was 17.61 mills and 98 percent of that equals 17.25 mills.

In response to a question from Senator Mathern, Mr. Neu said the North Dakota Recreation and Park Association discussed the proposed bill draft and supports the proposed bill draft.

Mr. Neu proposed the following changes be made to the bill draft:

1. On page 3, lines 15 through 17, language is required to determine the base year calculation;
2. On page 4, line 26 may be removed;
3. On page 5, lines 11 through 16, the language needs to relate back to the determination of the base year for startups;
4. On page 6, the new language may be removed;
5. On page 7, lines 5 through 7 may be removed; and
6. On page 10, lines 13 through 25, it may be necessary to identify all of the mills.

Mr. Hasti suggested the following additional changes to the bill draft--page 5, lines 15 and 16, the overstruck language may be retained; however, it is necessary to insert the total number of mills; and on page 10, lines 13 through 25, this transition language may not be necessary if the language on lines 22 through 25 is inserted on page 5.

It was moved by Senator Mathern, seconded by Citizen Member Bina, and carried on a voice vote that the commission adopt the bill draft as a commission bill draft, and that the bill draft be amended to incorporate Mr. Neu's and Mr. Hasti's amendments.

It was moved by Senator Mathern, seconded by Citizen Member Bina, and carried on a roll call vote that the bill draft, as amended, relating to consolidation of park district mill levies be approved and recommended to the Legislative Council. Senators Lindaas, Mathern, and Watne and Citizen Members Bina, Korgel, and Yantes voted "aye." No negative votes were cast.

It was moved by Senator Watne, seconded by Citizen Member Bina, 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.

It was moved by Citizen Member Bina, seconded by Citizen Member Korgel, and carried that the meeting be adjourned sine die.

No further business remaining, Chairman Lindaas adjourned the commission sine die at 2:20 p.m.