

# NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Tuesday, October 19, 1999  
Harvest Room, State Capitol  
Bismarck, North Dakota

Senator Elroy N. Lindaas, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Senators Elroy N. Lindaas, Tim Mathern, Darlene Watne; Citizen Members Bob Frantsvog, Les Korgel, Maxine Olson-Hill, Ken Yantes

**Members absent:** Representative Earl Rennerfeldt; Citizen Members Randy Bina, Mel Jahner; Governor Edward T. Schafer

**Others present:** Bryan Hoime, North Dakota Township Officers Association, Edmore

Chuck Thacker, North Dakota Township Officers Association, Lawton

Dina Butcher, Richard Gray; Division of Community Services, Bismarck

Mike Schwindt, Department of Human Services, Bismarck

Gerald W. VandeWalle, North Dakota Supreme Court, Bismarck

Sandra McMerty, North Dakota Association of Counties, Bismarck

Bev Nielson, North Dakota School Boards Association, Bismarck

Connie Sprynczynatyk, North Dakota League of Cities, Bismarck

Marshall W. Moore, Keith Magnusson, Keith Kiser; Department of Transportation, Bismarck

Chairman Lindaas called on Mr. Jay E. Buringrud, Assistant Director, Legislative Council, to review a memorandum entitled *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council*. He said the supplementary rules were revised and approved by the Legislative Council in November 1998. Although the commission's membership differs from a typical Legislative Council committee in that it includes members outside the Legislative Assembly, and although all the commission's responsibilities are set out by statute, he said, the commission operates under the same general rules of procedure as other interim committees.

Chairman Lindaas appointed Representative Earl Rennerfeldt to the position of vice chairman of the commission.

Chairman Lindaas called on commission counsel to present a memorandum entitled *Advisory Commission on Intergovernmental Relations 1999-2000 Activities - Background Memorandum*.

### LEADERSHIP INITIATIVE FOR COMMUNITY STRATEGIC PLANNING

Chairman Lindaas called on Ms. Dina Butcher, Director, Division of Community Services, for comments regarding the status of the Leadership Initiative for Community Strategic Planning. She said the Governor's Leadership Initiative for Community Strategic Planning came about as a result of a need at the community level for assistance in coordinating possible eligibility for federal programs and the availability of federal funds. The Leadership Initiative for Community Strategic Planning, she said, has communicated its goal with other state agencies in an attempt to coordinate services at the state level as well.

Chairman Lindaas called on Mr. Richard Gray, Americans with Disabilities Act Building Code Program Manager, Division of Community Services, for comments regarding the status of the Leadership Initiative for Community Strategic Planning. Mr. Gray distributed to the commission members packets of Leadership Initiative for Community Strategic Planning information taken from the Division of Community Services web page <http://www.state.nd.us/dcs/comdev/planning.html>, a copy of which is on file in the Legislative Council office. Initially, he said, the Leadership Initiative for Community Strategic Planning will be limited to the communities of Stanley and Steele and Cavalier County. He said the program will be available statewide in the spring of 2000.

In response to a question from Senator Mathern, Mr. Gray said the state will not be charging communities for the strategic planning service; however, communities may incur expenses in the process of strategic planning. He said the difference between a strategic plan and a comprehensive plan is that a strategic plan looks at the needs and targets set for a specific timeframe; whereas, a comprehensive plan is typically a large working plan without specific targets.

In response to a question from Citizen Member Frantsvog, Mr. Gray said the community strategic planning will follow an established procedure and a common approach, but it is likely that each community will have different results.

In response to a question from Senator Lindaas, Mr. Gray said outreach and promotion of the

Leadership Initiative for Community Strategic Planning has included contacting the Association of Counties, setting up a web page, and attending meetings such as this meeting today, and in the spring of 2000, outreach and promotion will go into full force based upon what is learned from the three pilot communities.

In response to a question from Citizen Member Yantes, Mr. Gray said part of the community strategic planning includes looking for sources of funding at the community level.

In response to a question from Citizen Member Korgel, Ms. Butcher said the Extension Service is involved in the Leadership Initiative for Community Strategic Planning. She said although there may be some similarities between the two programs, the Leadership Initiative for Community Strategic Planning will focus on rural communities. During the 1999 legislative session, she said, \$50,000 was appropriated for the Leadership Initiative for Community Strategic Planning pilot communities and planning phase.

In response to a question from Senator Lindaas, Ms. Butcher said the Leadership Initiative for Community Strategic Planning is intended for communities of all sizes; however, there is an assumption that larger communities will need less assistance than smaller communities. She said one reason for focusing on counties is to help small communities that have few resources.

Senator Watne said it is interesting to note the purpose of the Leadership Initiative for Community Strategic Planning is to improve a community's future opportunity for sustainability versus the opportunity for growth. She said she would be interested in receiving additional information from the Division of Community Services as the Leadership Initiative for Community Strategic Planning is implemented.

## **GOVERNMENTAL SERVICES**

### **Child Support Services**

Chairman Lindaas called on Mr. Mike Schwindt, Director, Child Support Enforcement, Department of Human Services, for comments regarding the status of the child support state disbursement unit and the provision of child support services at the local level. Mr. Schwindt provided written testimony, a copy of which is on file in the Legislative Council office.

Mr. Schwindt said conversion to the state disbursement unit began November 1998, and court-ordered conversion is essentially complete at this time. He said from the start of the conversion through the end of September 1999, the state disbursement unit processed \$37 million on 187,116 receipts. He said the implementation of the state disbursement unit has had an impact on services at the local level because the new system does not allow individualization the clerks could provide under the old system.

In response to a question from Senator Mathern, Mr. Schwindt said the issuance of income withholding

orders on nonpublic assistance child support cases will stay with the clerks of court until the next legislative session in order to allow for a smooth transition to the state disbursement system. He said in the case of public assistance child support cases, the regional child support enforcement units are responsible for income withholding order cases.

### **Judicial Services**

Chairman Lindaas called on Chief Justice Gerald W. VandeWalle, North Dakota Supreme Court, regarding the provision of judicial services at the local level. Chief Justice VandeWalle said the statutory requirement to decrease the number of district court judges has resulted in the provision of less judicial services at the local level. He said a natural result of decreasing the number of judges is to locate judges in larger communities because that is where a large number of cases are located.

Chief Justice VandeWalle said Rule 7.1 of the North Dakota Rules of Court provides a district court judge must reside in the district of service. Therefore, he said, although a district court judge may be chambered in a small community, that judge may live in a larger community within the district and may perform a large amount of work in a larger community within the district.

Chief Justice VandeWalle said the impact the changes made to the clerk of district court system may have on the judicial system is unknown. He said legislation passed during the 1999 legislative session provides that clerks of court be present at all county seats; however, there is some concern that future funds appropriated to pay for these services may be inadequate.

Chief Justice VandeWalle said the decrease in the number of district court judges may result in communities relying more heavily upon municipal judges. He said municipal judges are not necessarily law-trained.

In response to a question from Senator Lindaas, Chief Justice VandeWalle said because of qualified judicial immunity, the fact municipal court judges are not necessarily law-trained does not result in increasing liability at the county level.

In response to a question from Senator Mathern, Chief Justice VandeWalle said although statutory limits can be placed on municipal judges, this raises two concerns. First, he said, the municipal judges are not part of the unified judicial system, and second, if the state imposes duties on municipal judges, the communities will request state funding.

In response to a question from Senator Watne, Chief Justice VandeWalle said regarding the adequacy of court facilities across the state, a previous study was performed evaluating the physical condition of courthouses. He said physical court facilities are the responsibility of the county.

In response to a question from Senator Lindaas, Chief Justice VandeWalle said as a county's fiscal

responsibilities have decreased, the county's access to funding through fines also has decreased.

### Motor Vehicle Registration Services

Chairman Lindaas called on Mr. Keith Magnusson, Director, Driver and Vehicle Services, Department of Transportation, for comments regarding the status of providing motor vehicle registration services at the local level. He said although all motor vehicle registration services can be performed by mail, there are 13 privatized motor vehicle registration service branches throughout the state. Of the 13 privatized branches, he said, some branches are political appointments and some are run by chambers of commerce. He said the Bismarck office performs 70 percent of the operations and the branch offices provide 30 percent of the operations. The distribution of labor may change, he said, as a new computer system is implemented which will allow branch offices to key data directly into the system. Within the next year, he said, improved technology may allow for the provision of services over the telephone or through the Internet.

In response to a question from Senator Lindaas, Mr. Magnusson said although there have been inquiries regarding the expansion of the number of branch offices, these inquiries have not resulted in new branches. Mr. Magnusson noted that the Budget Committee on Government Services is studying state agency office space and the transfer of state agencies or state employees to rural areas. Addition of a new motor vehicle services branch site would cost \$25,000 for each additional site. Although very few branches make a profit, he said, the communities like the local provision of services.

In response to a question from Senator Watne, Mr. Magnusson said anytime the duties of a branch office are changed, those duties need to be arranged by contract and compensated.

### ROAD MAINTENANCE

Chairman Lindaas called on Mr. Marshall W. Moore, Director, Department of Transportation, for comments regarding local government funding sources for road maintenance. Mr. Moore provided the commission members with an information pamphlet entitled *North Dakota Surface Transportation Fact Book 1998* published by the Department of Transportation. A copy of the pamphlet is on file in the Legislative Council office.

Mr. Moore reviewed pages 23 through 33 of the pamphlet, explaining that a portion of the motor vehicle fuel tax is a state tax and a portion is a federal tax. He said some of the motor vehicle fuel taxes are returned to the state's 13 largest cities. He said cities having a population of not more than 5,000 rely on mill levy funds and special assessments to maintain city roads. He said a small portion of motor vehicle

fuel tax is directed to the counties and the counties also fund road maintenance through mill levy funds.

Mr. Moore said the Department of Transportation is maintaining road systems because the systems are established. He said the Department of Transportation needs to work with city, county, and township representatives to plan the future of road systems and also needs to work with private enterprise to address future needs.

In response to a question from Senator Lindaas, Mr. Moore said 25 to 30 percent of the federal funds received by the state is funneled to the counties and cities.

Mr. Moore said zoning occasionally needs to be changed to accommodate business needs, and unfortunately sometimes businesses fail to consider the impact their businesses may have on road needs and the need of road restrictions.

In response to a question from Citizen Member Frantsvog, Mr. Moore agreed a cooperative effort would be helpful in dealing with rail transportation and grade separation issues.

In response to a question from Senator Watne regarding the theory that the state "did too much too quickly," Mr. Moore said some counties have changed asphalt roads to gravel roads; however, the state has not. He said it is possible that due to demographic changes, there may be a lesser need for bridges throughout the state.

In response to a question from Senator Mathern, Mr. Moore said although there has not been a clear innovation in technology in the area of road maintenance, cooperation and planning should allow the state to keep up with road maintenance.

In response to a question from Citizen Member Korgel, Mr. Moore said if speed reduction were used as a tool to deal with road maintenance, the reduction would only be applied to select areas, not universally.

In response to a question from Senator Lindaas, Mr. Moore said over the last six years the state has spent \$11 million on road maintenance due to water issues related to Devils Lake. He said one problem with federal emergency funds is that the condition for eligibility is that the road be underwater or forecasted to be underwater. Federal highway fund dollars are available to help fund maintenance of flooded state roads, he said, and Federal Emergency Management Agency funds are available to assist in maintaining flooded city roads, county roads, and township roads.

In response to a question from Citizen Member Yantes, Mr. Moore said local communities are experiencing funding problems in the area of road maintenance, and one way to address this is for the parties involved to sit down and evaluate how available funds should be distributed. It would be helpful to find a way to increase user responsibility, he said, in prioritizing road maintenance needs.

Chairman Lindaas called on Mr. Bryan Hoime, North Dakota Township Officers Association, for

comments regarding road maintenance. Mr. Hoime said the townships in this state have 56,000 miles of road they are responsible for maintaining. Township roads are integral to recreation such as hunting and fishing, he said, and this may be an opportunity to implement user fees in helping to maintain the township roads.

Chairman Lindaas called on Mr. Chuck Thacker, North Dakota Township Officers Association, for comments regarding road maintenance. Mr. Thacker said township roads are in dire need of repair, and funds are not available at the township level for maintenance. He said the size of the trucks on the roads has increased, and private enterprise has not assisted with maintaining roads. The cost of road maintenance is increasing, he said, and it is important to keep township roads maintained to get products to market.

Chairman Lindaas called on Ms. Connie Sprynczynatyk, Executive Director, North Dakota League of Cities, for comments regarding local road maintenance. She said the issue of funding is ongoing, and the list of delayed projects is increasing.

## SUGGESTED AREAS OF STUDY

### Zoning

Chairman Lindaas called on Mr. Hoime for comments regarding zoning. Mr. Hoime said unlike cities, if a township lets a county deal with zoning issues, the township cannot reclaim that power at a later date, except in cases such as special authorities. He said zoning is an important issue as rural areas surrounding urban population centers experience repopulation. It is necessary, he said, that the entities involved in zoning cooperate and work together.

### Disaster Relief Fund

Mr. Hoime said the commission should consider studying the establishment and operation of a disaster relief fund to address property tax needs in federally declared disaster areas. He said although Senate Concurrent Resolution No. 4049 was passed during the 1999 legislative session and would have provided for such a study, the resolution was not given priority by the Legislative Council.

In response to a question from Citizen Member Yantes, Mr. Hoime said a disaster relief fund system would need to be sure to meet state law relating to the current limit on property taxes and could possibly be based on property value and property insurance premiums. He suggested the commission consider what other states have done in the area of disaster relief funds.

### E-Commerce

Senator Watne said the issue of e-commerce was discussed at the 1999 Four-State Legislative Conference in South Dakota. She suggested the commission review written material available at that seminar.

She also requested the commission be provided with a copy of the Attorney General's opinion regarding sales tax and catalog purchases.

Ms. Sprynczynatyk provided the commission members with a copy of a National League of Cities publication, *Ensuring a Central Role for Cities in the Electronic Marketplace*, a copy of which is on file in the Legislative Council office.

### Personal Property Replacement Tax

Citizen Member Yantes said he would like the commission to consider studying the ongoing issue of personal property replacement tax. He requested that the commission invite Mr. Mark Johnson, Executive Director, North Dakota Association of Counties, to attend a future meeting to provide the background on this issue.

### Commission Membership

Chairman Lindaas called on Ms. Bev Nielson, Assistant to the Executive Director, North Dakota School Boards Association, for comments regarding areas the commission should consider. Ms. Nielson said the membership of the Advisory Commission on Intergovernmental Relations does not include an elected school board member, and she would like to see this changed to include representation of school boards.

Senator Mathern said in Fargo there is dialogue between the school board and the city, and he views this as being very important. He said perhaps it is time to include the school board on the commission.

**It was moved by Senator Mathern and seconded by Senator Watne that the commission request that the Legislative Council staff be requested to prepare a bill draft that would increase the membership of the Advisory Commission on Intergovernmental Relations to include school board representation.**

Senator Watne noted that if the membership were increased by one member, the commission would be a commission of 12, which is an even number.

Ms. Sprynczynatyk said she is not opposed to adding a school board representative to the commission; however, in reviewing the history of the commission, the reason school boards are not on the commission is because the Department of Public Instruction is intended to represent the needs of the school boards and the federal guidelines on which the commission was originally based did not include school board representation. She said one way to address the even number of members is to increase the membership by two--one elected official and one appointed official.

Citizen Member Yantes said in 1987 Governor Sinner appointed an executive commission with school boards included in the membership, but the senators on the commission did not want school

boards on the commission; therefore, school board representatives were removed.

**The motion carried on a roll call vote.** Senators Lindaas, Mathern, and Watne and Citizen Members Frantsvog, Korgel, and Olson-Hill voted "aye." Citizen Member Yantes voted "nay."

Chairman Lindaas adjourned the meeting at 2:30 p.m.

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Jennifer S. N. Clark  
Commission Counsel