NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Thursday, June 10, 2004
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Scot Kelsh, Chairman, called the meeting to order at 9:05 a.m.

Members present: Representative Scot Kelsh; Senator Bill L. Bowman; Citizen Members Ron Anderson, Randy Bina, Bob Frantsvog, Mike Montplaisir, Bev Nielson, Devra Smestad

Members absent: Representative Andrew Maragos; Senator Michael Polovitz; Citizen Member Donny Malcomb; Governor John Hoeven

Others present: Marcy Dickerson, Tax Department, Bismarck

Sandy Clark, North Dakota Farm Bureau, Bismarck

Wade Williams, North Dakota Association of Counties, Jamestown

Vicki A. Lippert, Morton County Treasurer, Mandan

Linda Svihovec, McKenzie County Treasurer, Watford City

Charles McCay, Farm Credit Services, Bismarck

Kathy Exner, LaMoure County Treasurer, LaMoure

Keith Magnusson, Gina Glatt, Keith Kiser; Department of Transportation, Bismarck

It was moved by Citizen Member Bina, seconded by Citizen Member Nielson, and carried on a voice vote that the minutes of the September 25, 2003; March 1, 2004; and May 7, 2004, meetings be approved as distributed.

CONSOLIDATION OF MILL LEVIES

Chairman Kelsh called on Ms. Sandy Clark, North Dakota Farm Bureau, for comments regarding the law relating to consolidation of county mill levies. Ms. Clark said that in response to the commission's request, representatives of the North Dakota Farm Bureau and the North Dakota Association of Counties have met more than once to discuss whether there is any common ground regarding proposed amendments to the consolidation of county mill levies law.

Ms. Clark said the North Dakota Farm Bureau takes the general position that the consolidation of county mill levy law allows for a potential tax increase without the vote of the people, a vote of the people should take place before a county changes to a consolidated mill levy system, levies for entities with boards should not be included in the consolidated general fund, current law relating to how a tax increase would take place is problematic, and current law regarding reference to the consumer price index should be changed to reflect a date certain. She said before she would be able to commit to any concessions on any of these issues, she would need to receive direction from the North Dakota Farm Bureau.

In response to a question from Citizen Member Nielson, Ms. Clark said the North Dakota Farm Bureau is opposed to the three-year, lookback provision.

In response to a question from Representative Kelsh, Ms. Clark said she is optimistic that before the end of the summer, she will receive guidance from the North Dakota Farm Bureau regarding any change in position of the bureau.

In response to a question from Citizen Member Montplaisir, Ms. Clark said if the law were changed to provide for a vote of the people before consolidation took place, the North Dakota Farm Bureau likely would not oppose the general concept of consolidation.

Chairman Kelsh called on Mr. Wade Williams, North Dakota Association of Counties, for comments regarding the consolidation of county mill levies. Mr. Williams said he understands the process of lobbying and that Ms. Clark needs to work within the related time constraints of the North Dakota Farm Bureau. However, he said, in reviewing the consolidated county mill levy law, the levies for Historical Society work and county fairs were included in the consolidated general fund because this money was granted to the respective boards by the board of county commissioners; additionally, he said, the three-year, lookback provision is in present law. Mr. Williams requested that the commission adopt one of the three bill drafts presented by the North Dakota Association of Counties at the May 7, 2004, meeting.

In response to a question from Senator Bowman regarding why the North Dakota Association of Counties would be in opposition to local control through approval of consolidation by a vote of the people, Mr. Williams said the association is in no way opposed to local control; however, the county officials are elected and this is the mechanism through which there is local control.

In response to a question from Representative Kelsh, Mr. Williams said because the North Dakota

Farm Bureau had not clearly stated that its primary opposition is based upon the issue of the vote of the people, the North Dakota Association of Counties had not fully considered whether the association would support including a vote of the people provision to the current consolidation law. He said he would bring this issue to the association and report back to the Advisory Commission on Intergovernmental Relations at a future meeting.

Citizen Member Nielson said that during the 1980s, there was consolidation of the school mill levies. Citizen Member Anderson said the consolidation of school mill levies raised some of the same concerns as are being raised in the consolidation of county mill levies. He said he has considered whether it is necessary to limit mill levies at all and instead maybe it would be more appropriate to let the people at the local level determine what an appropriate tax limitation should be.

Senator Bowman said changes in policies make people concerned. He said each region, area, or community has different needs and perceptions of a situation; therefore, it is difficult to support a total abandonment of taxing limitations on local governments.

Citizen Member Anderson said boards of county commissioners are local government and the commissioners should be in a position to make local decisions.

Citizen Member Nielson said that at the state level, legislators prefer to have money in the general fund, thereby allowing the Legislative Assembly to determine where to most appropriately provide funds. She said that local governments would like this same flexibility.

Citizen Member Montplaisir posed the hypothetical question of what would the state do if the state were limited in the same manner that counties are regarding dedicated funds and the lack of a general fund.

Chairman Kelsh called on Ms. Marcy Dickerson, Tax Commissioner's office, for comments regarding the consolidation of county mill levies. Ms. Dickerson provided written testimony, a copy of which is attached as Appendix A.

Ms. Dickerson explained that her testimony is neither in support of or in opposition to consolidation of county mill levies, but is meant to respond to the request of the committee for background information regarding mill levy limitations.

Ms. Dickerson said the basic county mill levy system is such that a county may levy up to the maximum number of mills allowed for each fund or purpose as long as there is voter approval when required. She said a county may not exceed the maximum number of mills for any fund or purpose and once a county is at the maximum for that purpose a reduction in taxable valuation will reduce the number of dollars that can be raised just as an increase in taxable valuation will increase the number of dollars that can be raised.

Ms. Dickerson said North Dakota Century Code (NDCC) Section 57-15-01.1 provides an alternative method for counties to levy property taxes. This section, she said, provides for including property exempt by local discretion or charitable status in the calculations. She said this section limits the number of dollars levied not the number of mills levied. She reviewed history and application of this alternative. Simply put, she said, use of this option guarantees a taxing district can levy as many dollars for a fund or program as it levied in the base year, regardless of changes in taxable valuation of existing property; it guarantees the taxing district can levy additional dollars to serve new property; and it prevents a taxing district from levying dollars to serve property that is no longer in the taxing district.

Ms. Dickerson reviewed NDCC Section 57-15-06.10, the law relating to the consolidation of county mill levies. She said under this law, a county would be able to increase mills levied for the consolidated general fund over the previous year's mills by no more than the increase in the consumer price index for all urban consumers, all items, United States city average. She said if the county taxable value remained the same from year to year, taxes levied could be increased by the consumer price index percentage. She said if the taxable value increases, that alone can provide a tax increase even if the mill rate is not increased; however, if taxable value decreases by a greater percentage than the consumer price index increases, taxes levied will decrease.

In response to a question from Representative Kelsh, Ms. Dickerson said NDCC Section 57-15-01.1 is optional for taxing districts. She said any taxing district may use this option, unless that district or county has consolidated the county general fund mill levies. Additionally, she said, in order for a county to use this option under Section 57-15-01.1, there would need to be a vote of the governing body before the option could be used.

In response to a question from Citizen Member Frantsvog, Ms. Dickerson said that once a governing body votes to use the option under NDCC Section 57-15-01.1 it is likely that that county would be allowed to go back to the previous option following the vote of the governing body.

In response to a question from Senator Bowman, Ms. Dickerson said an unlimited mill levy is not an option for counties regardless of which system they use.

In response to a question from Citizen Member Montplaisir, Ms. Dickerson said the only option she is aware of that would allow for a county to consolidate mill levies to a general fund would be through NDCC Section 57-15-06.10 or through a county's home rule charter.

Mr. Williams said once a county levies the maximum for a levy, such as a road levy, that county often needs to save road levy funds for several years before there is enough money to finance a road project; however, consolidation would allow more flexibility for the county to pay for a large project such as a road project.

In response to a question from Representative Kelsh regarding which of the three bill drafts presented by the North Dakota Association of Counties that each of the organizations would prefer, Mr. Williams said the North Dakota Association of Counties prefers the third draft. Ms. Clark said the North Dakota Farm Bureau would prefer the first draft with some additional changes.

Citizen Member Montplaisir said he views the consolidation of county mill levies to be part of a progression, which began with consolidation of the school district mill levies and then the consolidation of the park district mill levies. He said although the process for calculation of county mill levies is a system that works, the process is so complex that nobody outside the system is able to understand it. Additionally, he said, the consolidation of county mill levies law that was enacted does not work. He said in order for the consolidation of county mill levies law to work, there would need to be a lookback of more than one year so that counties would not essentially be penalized for lowering their taxes by being restricted from increasing them again in a future year. He said although adoption of a home rule charter would be an alternative option for counties to pursue consolidation of county mill levies, the home rule charter transition is not without complexity.

It was moved by Citizen Member Montplaisir and seconded by Citizen Member Smestad that the commission request the Legislative Council staff to prepare a bill draft based upon version 3 proposed by the North Dakota Association of Counties.

Citizen Member Montplaisir said he is not necessarily opposed to ultimately amending version 3 to require an upfront vote of the people before county mill levy consolidation takes place.

Citizen Member Nielson said enactment of bill draft version 3 could result in a significant increase in taxes.

Citizen Member Montplaisir said in using a home rule county such as Cass County as an example, Cass County excluded from the general fund any boards with certified levies. He said the Cass County system is very simple. Additionally, he said, bill draft version 3 could be amended to remove the 118-mill limit in such a way that it would allow for the vote of the people to dictate the levy limits placed upon a county.

Citizen Member Bina said the park district consolidation allows for the needed flexibility. He said the big question for consolidation is future levy growth and how to cap this growth. This issue of growth was addressed by the park districts, he said, by freezing this amount and providing that an increase would require a vote of the people.

Citizen Member Smestad said not every county in the state is levying the maximum amount for some levies. She said consolidation would allow flexibility and elected officials would be held responsible to act upon the wishes of the people.

Citizen Member Montplaisir said at the county level, although funding for roads is part of the general fund, there are special designations for some road and human services funds.

Citizen Member Anderson said any action that would allow counties the flexibility to move money around where it is needed would be helpful; however, without a multiple-year lookback there is essentially no flexibility for these counties. He suggested getting rid of the system of mill levies entirely, thereby making the system more easily understood. He said bill draft version 3 would be a good starting place.

The motion passed on a roll call vote. Representative Kelsh and Citizen Members Anderson, Bina, Frantsvog, Montplaisir, Nielson, and Smestad voted “aye.” Senator Bowman voted “nay.”

Chairman Kelsh said the commission will schedule time at a future meeting to address proposed amendments to this commission bill draft.

DELINQUENT PROPERTY TAXES

Chairman Kelsh called on Ms. Dickerson for comments regarding the process of foreclosure on a property tax lien. Ms. Dickerson provided written testimony, a copy of which is included in Appendix A. She reviewed the process of foreclosure on a property tax lien. Additionally, she said, 2003 House Bill No. 1367 would have reduced the penalty and interest rate on delinquent property taxes from 12 to 8 percent; however, that bill failed.

Ms. Dickerson said that her experience has been that the Tax Commissioner’s office receives comments from members of the public ranging from complaints that the interest rates on delinquent property taxes are too high to comments that the interest rates on delinquent property taxes are too low and do not provide enough of a disincentive for delinquent property taxpayers.

In response to a question from Senator Bowman regarding the percentage of property in this state which actually escheats to the county due to nonpayment of property taxes, commission counsel said a year 2000 report of the International Association of Assessing Officers reported that North Dakota has a 5 percent tax delinquency in a typical year with 99 percent of property taxes ultimately being collected. She said this would indicate that approximately 1 percent of property taxes actually reach escheatment to the county. Citizen Member Montplaisir said in 1999 Cass County experienced a very small percentage of property actually escheating to the county, approximately $180,000 out of $150 million in property taxes.

Senator Bowman said there is a good chance that if a property owner fails to pay property taxes even before being subjected to interest due to delinquency, that nonpaying property owner is not likely to pay for the taxes and interest after five years.

Chairman Kelsh called on Citizen Member Montplaisir for comments regarding delinquent property taxes. Citizen Member Montplaisir said although the system for collection of delinquent property taxes is not broken, some people get into deep financial trouble when property taxes are delinquent. He said that allowing for five years of delinquency adds to this problem. He said the idea of decreasing the period of foreclosure has been considered several times but there has never actually been a bill draft introduced. He said his conversations indicate that the cities would be in support of decreasing the period of foreclosure from five to three years. He said a five- to three-year decrease in the period of the foreclosure would be simple; however, the actual implementation would be more complicated due to the order in which delinquent taxes become due. A possible incentive, he said, to assist in implementation may be to provide for a short-term amnesty for interest and penalties.

In response to a question from Representative Kelsh, Citizen Member Montplaisir said home rule counties follow state law for purposes of delinquent property tax foreclosure.

In response to a question from Senator Bowman regarding whether there may be a compound impact in changing the county mill levy consolidation law such that it may result in an increase in property taxes and then also shortening the period of time allowed for delinquent property taxes, Citizen Member Montplaisir said he is not certain whether changing the consolidation of county mill levies law would actually result in higher taxes and whether decreasing the foreclosure period would actually result in higher delinquency or escheatment proceedings.

Citizen Member Nielson said it does not seem to make sense to give a property taxpayer five years to pay for something that taxpayer cannot afford.

Chairman Kelsh called on commission counsel for comments regarding the foreclosure period and interest and penalties provisions of neighboring states. Commission counsel said there are more than 150 different systems in the United States for collecting property taxes; therefore, there are problems associated with comparing one state's system to another state's system. She said that although North Dakota's system differs significantly from the systems of neighboring states in that the North Dakota system provides for direct escheatment to the county, the following general comparisons may be helpful. The time for foreclosure is 4.75 years in North Dakota; approximately 4 years in Montana; approximately 4 or 5 years in South Dakota; and approximately 4 years in Minnesota. The interest rates are North Dakota - 12 percent annually; Montana - 10 percent annually; South Dakota - 10 percent annually; and Minnesota - from 10 to 14 percent annually. She said the penalty provisions vary significantly from state to state. Finally, she said, a representative of the National Conference of State Legislatures reported that the typical foreclosure period is two to three years following a lien procedure.

Citizen Member Montplaisir said although there is discretion in the law regarding abatement of property taxes, interest, and penalties, Attorney General opinions seem to have interpreted this discretion narrowly and he does not believe that this law could be used to authorize counties to provide for an interest and penalties amnesty period. He said it would most likely be necessary to put this amnesty provision in law.

In response to a question from Citizen Member Frantsvog, Citizen Member Montplaisir said if property actually escheats to the county, the county takes possession of that property and may turn around and sell that property, in which case the county would keep proceeds to pay for interest and penalties and then would distribute remaining proceeds to the appropriate taxing districts, starting with the oldest year of delinquent taxes. He said it is interesting that Minnesota law requires a delinquent taxpayer to pay the most recent year of taxes first, thereby preventing a taxpayer from being in a constant state of delinquency.

Citizen Member Smestad said special assessments make a big difference to city governments and the special assessments need to be considered before any abatement of property tax is allowed.

Citizen Member Montplaisir explained that surprisingly it is not uncommon in a delinquent property tax situation for the property in question to undergo several changes in ownership without a deed ever being recorded. He said failure to record a deed is due to the delinquent property tax preventing recording of a sale.

Citizen Member Anderson raised the situation his county faces under which the Three Affiliated Tribes purchases property and then automatically lets that property go into default for the full five years, hoping that a judicial decision will rule in favor of the tribe. He said that in this instance, shortening that period from five to three years would be helpful to the taxing entities.

It was moved by Citizen Member Anderson, seconded by Citizen Member Montplaisir, and carried on a roll call vote that the Legislative Council staff be requested to draft a bill that would provide that the property tax delinquency foreclosure period be three years with a provision that would require counties to provide an interest and penalties amnesty period. Representative

Kelsh; Senator Bowman; and Citizen Members Anderson, Bina, Frantsvog, Montplaisir, Nielson, and Smestad voted "aye." No negative votes were cast.

MOTOR VEHICLE BRANCH OFFICE PILOT PROJECT

Chairman Kelsh called on Ms. Linda Svihovec, McKenzie County Treasurer, for comments regarding the county treasurer motor vehicle branch office pilot project. Ms. Svihovec reported that since the last meeting of the commission, representatives of the North Dakota Association of Counties, the three treasurers in the pilot project program, and representatives of the Department of Transportation met to discuss how to proceed with the matter of the expiration of the pilot project. She distributed a county map indicating where current and proposed motor vehicle branch offices are located, a copy of which is attached as Appendix B.

Ms. Svihovec said although the individuals at the meeting did not formally create or define formal criteria to be considered in determining future county treasurer branch offices, the parties did consider several factors and did agree upon recommending that the following county treasurers be allowed motor vehicle branch offices: Renville, Pembina, Foster or Griggs, Grant, and Dickey. She said the branch office in Dickey County would only be provided if the private branch office voluntarily closes.

In response to a question from Citizen Member Frantsvog, Ms. Svihovec said that on the county map that she distributed, the circled number is the number of miles from the nearest branch office and the other numbers included within the counties are the counties' populations.

Chairman Kelsh called on Mr. Keith Magnusson, Department of Transportation, for comments regarding the county treasurer motor vehicle branch office pilot project. Mr. Magnusson said representatives of the Department of Transportation did meet with the counties and treasurers and did agree upon the proposed increase in branch offices located with county treasurers. He said their proposed branches will be recommended to the Governor. He said even though the county treasurer motor vehicle branch office pilot project is scheduled to expire, there is not a need for legislation to ensure continuation of these three county treasurer branch offices. He said the three county treasurer branch offices will remain after expiration of the pilot program in part because the three branches are working so well and in part because once a service is offered, it is very difficult to take away that service.

Mr. Magnusson said that in determining the location of motor vehicle branch offices, the department considers a variety of factors, including population, distance between branch offices, the desire or the ability of a county treasurer to provide branch office services, the cost of establishing an office, and time-honored tradition. He said the Department of Transportation is hopeful to make a decision regarding motor vehicle branch office locations by the end of the summer. He said the actions of the Department of Transportation would depend upon the decision of the Governor; however, he stated that he is mindful of the county treasurers budgeting cycle and would try to respect these needs.

Senator Bowman said he is pleased with the Department of Transportation's support of the county treasurer motor vehicle branch office pilot project but he does need assurance that the department will continue these three county treasurer branch offices and will add additional county treasurer branch offices as appropriate. He said he is proud of the work of the county treasurers.

Mr. Magnusson said that since the legislation implementing the county treasurer motor vehicle branch office pilot project, time has passed and technology has changed. He said the next step that the three county treasurer branch offices will be taking is a transition to the computerized motor vehicle system.

Mr. Williams said that under the county treasurer motor vehicle branch office program, the counties bear the cost of setting up these branches so the state does not incur this cost.

POSSIBLE AREAS OF STUDY

Chairman Kelsh said he would entertain adding additional areas of study but that the commission members need to be aware of the time limitations and the upcoming legislative session.

No further business appearing, Chairman Kelsh adjourned the meeting at 11:40 a.m.

Jennifer S. N. Clark
Commission Counsel

ATTACH:2