

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Tuesday, January 17, 2006  
Roughrider 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, Chuck Damschen; Citizen Members Karin Fischer, Jon Martinson, Greg Sund, Ken Yantes

**Members absent:** Senators Dwight Cook, Constance Triplett; Citizen Members Randy Bina, Barry Cox, Mary Lee Nielson; Governor John Hoeven

**Others present:** See attached appendix

**It was moved by Mr. Martinson, seconded by Ms. Fischer, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.**

#### PROPERTY TAX

Ms. Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division, State Tax Department, presented written testimony on the use of the phrase "in part," as used in "used wholly or in part for public charity," as it applies to property tax exemptions. She said a letter from the State Tax Commissioner's office to the Grand Forks state's attorney in 1979 stated that "If a property is used partly for the charitable purposes of the public charity owner of the building and partly for other uses, the dominant use determines the use of the property." She provided a copy of the 1979 letter and handout on sales and use tax guidelines for exempt organizations. A copy of her testimony, the letter, and the handout is on file in the Legislative Council office.

In response to a question from Representative Kelsh, Ms. Dickerson said if portions of something are compared and are not easily quantifiable, there is an inherent gray area.

In response to a question from Representative Kelsh, Ms. Dickerson said whether a property is exempt from property taxation is first decided by the local assessor and then the claim is appealed up the chain. She said the highest level of appeal is to the State Board of Equalization.

In response to a question from Representative Kelsh, Ms. Dickerson said there are controversies in other states over whether hospitals and YMCAs should have charitable status.

In response to a question from Ms. Fischer, Ms. Dickerson said for a building to be exempt from property tax because of a charitable purpose, the use of the property must be a use that was intended for

that charity, i.e., the intended use is within the stated purpose of the charity.

In response to a question from Mr. Sund, Ms. Dickerson said the use of the words "in part" are inherently unclear; however, if the standard were used wholly for charitable purposes, there may be difficulty in having support for that proposition. She said the problem is as much a philosophical problem as it is a problem of semantics.

In response to a question from Representative Kelsh, Ms. Dickerson said charitable goals may not be monetary but may make money. She said a secondhand store that sells clothing but is staffed by the developmentally disabled may have a dominant purpose of providing training to the developmentally disabled to enter retail employment.

In response to a question from Representative Damschen, Ms. Dickerson said most of the decisions relating to the use of the term "in part" are handled at the local level. She said there is lack of uniformity among the local decisionmakers. She said a major issue as of late is whether assisted living facilities are charitable.

In response to a question from Mr. Sund, Ms. Dickerson said although most appeals come from property owners that are found not to be charitable, cities have appealed local decisions.

In response to a question from Mr. Yantes, Ms. Dickerson said although there may be flexibility in the terms for political reasons, flexibility can result in inequity and everyone in the same circumstance should be treated the same as to taxation.

#### INCREASED TAX LEVY AUTHORITY BILL DRAFT

At the request of Chairman Kelsh, commission counsel presented a bill draft [\[70025.0100\]](#) allowing a taxing district to increase the amount levied in dollars in the base year as adjusted by the consumer price index.

Mr. Jerry Hjelmstad, North Dakota League of Cities, presented information in support of the bill draft. He said it appears all cities are taxing the maximum tax levy. He said with inflation prices increase and cities are limited to offering fewer services with the same amount of money. He provided a handout of the 2005 taxable valuation and tax levies in North Dakota cities. A copy of the handout is on file in the Legislative Council office.

In response to a question from Representative Damschen, Mr. Hjelmstad said under present law a city would need to vote on a tax increase to exceed the dollars levied in the base year. He said with the bill draft, a city would be able to increase by the consumer price index.

In response to a question from Mr. Yantes, Mr. Hjelmstad said the limitation on cities' taxation began in 1995. He said between 1981 and 1995 the Legislative Assembly allowed a certain percentage increase each biennium.

In response to a question from Mr. Sund, Mr. Hjelmstad said the primary beneficiaries of the bill draft are smaller cities that do not have other revenue sources besides property and do not have increasing values in real estate.

Mr. Terry Traynor, North Dakota Association of Counties, presented testimony in support of the bill draft. He said 46 counties are at the cap. He said the cap creates complications with county budgeting because the county social services employees receive raises when state employees receive raises and counties pay increases in automation costs based upon the consumer price index without increased revenues.

Ms. Sandy Clark, North Dakota Farm Bureau, presented testimony in opposition to the bill draft. She said taxing districts should live within their means and streamline. She said substantial increases in valuation have increased tax revenues. She said the bill draft compounds the increase unless mill levies are lowered in proportion to the increased valuations. She said taxpayers should have an opportunity to vote on tax increases. She said in general property taxes are too high. She said it is time for property tax relief, not increases.

Mr. Sund said on page 1, line 9, of the bill draft, after "resolution" the words "or ordinance" should be added.

Ms. Fischer said budgets are tight and getting tighter and more services are being required. She said an increase should be allowed if it is reasonable.

Representative Damschen said if small cities are having trouble, their citizens are most likely not going to be able to pay more.

### **LEGAL SERVICES FOR THE INDIGENT**

Ms. Sally Holewa, North Dakota State Court Administrator, presented testimony on legal services provided for indigent individuals which are not paid by the state. She provided a handout on indigent defense costs paid by counties for 2001-02 and 2003-04 for sexual predator commitment proceedings, mental illness proceedings, guardian ad litem proceedings, and custody investigations. The total estimate of costs for these services was \$390,300 per biennium. A copy of each handout is on file in the Legislative Council office.

Mr. Traynor provided testimony on legal services provided for indigent individuals which are paid by the counties. He said the costs contained in the handout

are sporadic and some are especially costly, for example, commitment of a sexual predator. He said this cost is on the county to which the predator is released after prison. He said there is a conflict of interest when the county hires someone to represent an individual in a legal proceeding against the state's attorney who is a county official. He said although the transfer of these legal services to the state would save the counties money, the conflict of interest and difficulty in budgeting are satisfactory and independent reasons for the transfer. He said the increase in cost for custody hearings is the result of a federal law that was passed that requires a quicker process and more use of guardianships when a child is removed from the home.

### **COUNTY DOCUMENT PRESERVATION FUNDS**

Mr. Traynor provided written testimony on the survey being done by the Association of Counties on the counties' efforts to respond to the statutory reporting requirement regarding land record preservation. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Kelsh, Mr. Traynor said a copy of each land record is stored onsite in each county. He said the counties accepted federal Department of Emergency Management money which obligated each county to microfilm all records. He said the microfilm is sent to salt mines in Kansas for storage.

### **UNIFORM ENVIRONMENTAL COVENANTS ACT**

At the request of Chairman Kelsh, commission counsel compared the Uniform Environmental Covenants Act to 2005 House Bill No. 1279. He said the Uniform Environmental Covenants Act was included in one of the drafts for House Bill No. 1279 but was removed. He said even though the uniform Act was removed, House Bill No. 1279 allows for environmental covenants. He said House Bill No. 1279 does not provide as many particulars as to environmental covenants as the Uniform Environmental Covenants Act, especially as to the relation of the covenant to the common-law doctrine of adverse possession, tax lien foreclosures, zoning changes, and marketable title statutes.

Representative Kelsh said it appears that House Bill No. 1279 addresses the same type of problem that the Uniform Environmental Covenants Act addresses. He said House Bill No. 1279 was created by many stakeholders in this state over a long period of time to address the problems of contaminated property. He said the commission should monitor House Bill No. 1279 and make changes if needed instead of pursuing the Uniform Environmental Covenants Act.

## COORDINATION OF EFFORTS TO DISCOURAGE DESTRUCTIVE BEHAVIOR

At the request of Chairman Kelsh, commission counsel presented an update of a survey entitled [Survey of Agency Alcohol, Drug, Tobacco, and Risk-Associated Programs](#). He said the table included an additional group, the North Dakota Higher Education Consortium for Substance Abuse Prevention. He said most of the increased spending in general fund money and overall funds from the 2003-05 biennium to the 2005-07 biennium may be attributed to Department of Corrections and Rehabilitation programs.

Mr. Lee Erickson, State Coordinator, North Dakota Students Against Destructive Decisions, presented written testimony on Students Against Destructive Decisions and the need for stable funding. A copy of his testimony is on file in the Legislative Council office. In addition, he provided written testimony on 2005 Senate Bill No. 2372. He said if Students Against Destructive Decisions did not have assurances from the Governor and the majority and minority legislative leadership for funding for Students Against Destructive Decisions, Students Against Destructive Decisions supporters would file an initiated measure similar to 2005 Senate Bill No. 2372. A copy of his testimony is on file in the Legislative Council office. He provided a handout on North Dakota alcohol tax facts. A copy of the handout is on file in the Legislative Council office.

Ms. Lindsey Jameson, Ms. Megan Jury, Mr. Jacob Holm, and Ms. Kristi Frahm, representing Students Against Destructive Decisions, presented testimony on the positive effects of Students Against Destructive Decisions on the lives of young people in this state.

In response to a question from Mr. Martinson, Mr. Erickson said grant money is unpredictable and grants are limited to a certain purpose for a limited period of time. He said one of the goals of Students Against Destructive Decisions is to have community coordinators throughout the state.

In response to a question from Representative Kelsh, Mr. Erickson said generally foundations prefer to provide matching money for sustainable programs.

In response to a question from Representative Kelsh, Mr. Erickson said national Students Against Destructive Decisions rules prohibit direct funding from the alcohol industry.

In response to a question from Representative Kelsh, Mr. Erickson said if Students Against Destructive Decisions initiates a measure, the group wants the measure on the June ballot. He said if there is legislative support for the same ideas contained in the initiated measure, Students Against Destructive Decisions would not proceed with the initiated measure. He said Students Against Destructive Decisions would need to know of this support by the end of January.

Mr. Roger Mulvaney, Superintendent, Maple Valley School, presented information on Students Against

Destructive Decisions. He said Students Against Destructive Decisions is cost-effective and provided an alternative to drugs and alcohol.

In response to a question from Representative Kelsh, Mr. Erickson said Senate Bill No. 2372 would have increased all beer taxes to 25 cents per gallon and would have raised \$1.7 million per year. He said the proposed initiated measure would raise the tax on cans and bottles to 24 cents per gallon and bulk sales to 16 cents per gallon. He said the total funds raised under the initiated measure would be approximately \$1.3 million per year.

In response to a question from Mr. Martinson, Mr. Erickson said because of the loss of federal funding, Students Against Destructive Decisions does not have the luxury of time in determining whether to initiate a measure or not.

In response to a question from Representative Damschen, Mr. Erickson said the state office uses approximately \$80,000 per year. He said to meet the needs of the state, approximately \$225,000 per year is needed at the state level. He said the additional money raised by the tax could be used for a media campaign.

Representative Damschen said he supports the efforts of Students Against Destructive Decisions. He said future savings as a result of people not engaged in destructive decisions would be enormous.

In response to a question from Mr. Sund, Mr. Erickson said there are approximately 70 chapters of Students Against Destructive Decisions in this state. He said individual chapters raise their own money for their own programs.

Ms. Charlotte Olson, Division of Mental Health and Substance Abuse, Department of Human Services, presented information on funds provided to Students Against Destructive Decisions. She said a grant provided to Students Against Destructive Decisions for a program called Reality Check will run out in June 2007.

Mr. Sund said he would support a bill draft to provide funding for Students Against Destructive Decisions.

Representative Damschen said the commission should consider a bill draft with funding for the types of programs supported by Students Against Destructive Decisions.

Ms. Fischer said she was in support of the commission finding a dedicated funding source for Students Against Destructive Decisions.

Mr. Bill Goetz, Chief of Staff, Governor's office, provided information on the Office of Faith-Based and Community Initiatives. He said there are no financial resources for the office and the office has been absorbed into the Governor's office. He said the advisory commission will meet within the next two months and has not named a chairman. He said there appears to be some opportunity for the office to be able to receive grants.

### **OTHERS AREAS OF STUDY**

Chairman Kelsh invited commission members to suggest topics the commission may study. The following is a list of those suggestions:

1. Repeal of Sunday closing law.
2. Raise township general mill levy limitations from 18 mills to 30 mills.
3. The reach of extraterritorial zoning around cities.
4. Replacement of real estate property tax with another tax for school funding.

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

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Timothy J. Dawson  
Commission Counsel

[ATTACH:1](#)