

JOURNAL OF THE HOUSE

Forty-eighth Legislative Assembly

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SECOND DAY

Bismarck, January 5, 1983

The House convened at 1:30 p.m., with Speaker Kelly presiding.

The prayer was offered by Rev. Russell Dilley, District Superintendent, United Methodist Church.

ROLL CALL

The roll was called and all members were present, except Representatives Murphy and Shockman.

A quorum was declared by the Speaker.

REVISION AND CORRECTION OF THE JOURNAL

MADAM SPEAKER: Your Committee on Revision and Correction of the journal has carefully examined the journal of the First day and finds the same to be correct.

REP. LAUGHLIN, Chairman

REP. GULLICKSON MOVED that the report be adopted, which motion prevailed.

REPORTS OF STANDING COMMITTEE

MADAM SPEAKER: Your Committee on Judiciary to which was referred HB 1152 has had the same under consideration and recommends by a vote of 14 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING that the same DO NOT PASS.

REP. E. POMEROY, Chairman

HB 1152 was placed on the Eleventh order of business on the calendar for the succeeding legislative day.

MADAM SPEAKER: Your Committee on Judiciary to which was referred HB 1171 has had the same under consideration and recommends by a vote of 14 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING that the same DO PASS.

REP. E. POMEROY, Chairman

HB 1171 was placed on the Eleventh order of business on the calendar for the succeeding legislative day.

MADAM SPEAKER: Your Committee on Judiciary to which was referred HB 1212 has had the same under consideration and recommends by a vote of 14 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING that the same DO PASS.

REP. E. POMEROY, Chairman

HB 1212 was placed on the Eleventh order of business on the calendar for the succeeding legislative day.

#### FIRST READING OF HOUSE BILLS

Rep. Strinden, Goetz introduced:

HB 1243: A BILL for an Act making an appropriation to the state water conservation commission to defray the expenses of planning and constructing the southwest pipeline project. Was read the first time and referred to the Committee on Appropriations.

Rep. Lipsiea introduced:

HB 1244: A BILL for an Act to create and enact a new section to chapter 57-39.2 and a new section to chapter 57-40.2 of the North Dakota Century Code, relating to a deduction allowed retailers for the collection of sales and use taxes. Was read the first time and referred to the Committee on Finance and Taxation.

#### FIRST READING OF HOUSE CONCURRENT RESOLUTIONS

Rep. Nalewaja, Swiontek introduced:

HCR 3008: A concurrent resolution directing the Legislative Council to study the feasibility and desirability of adopting a uniform competitive bid law. Was read the first time and referred to the Committee on State and Federal Government.

Speaker Kelly read the Rules for Decorum in the House Chamber.

#### RULES FOR DECORUM ON THE HOUSE FLOOR

1. No food or liquids will be allowed on the floor while the House is in session.
2. Smoking will be allowed in the lower level of the chamber only.
3. Flash camera pictures may not be taken at any time, except by the press.
4. Employees are instructed to allow no one to sleep or assume a prone position on the seats which line both sides of Memorial Hall between the chambers.
5. When a vote is to be taken, every member shall be in their seat and register their own vote. There will be a certain amount of flexibility for the Majority and Minority Leaders and their assistants.
6. During debate on legislation, members are to be attentive and quiet, and the noise behind the rail shall be held to a minimum.

7. Members are reminded of a new rule, number 351-3, which states that no member shall have more than one guest seated with the member on the floor at any one time.
8. Legislators and visitors will not be allowed to visit or lean over the back railing.
9. Members are reminded of House Rule 205-3 which states that the Sergeant-at-Arms shall clear the floor of the House chamber in front of the railing of all persons, except legislators, legislative employees, and members of the press, during the time period commencing thirty minutes before the House convenes on any legislative day until the House recesses for that calendar day.
10. Legislators and employees are expected to be suitably attired.
11. When the Speaker is putting the question, no member shall walk out or across the House. When a member is speaking, no member shall pass between the person speaking and the Chair.
12. A member desiring to speak shall rise and respectfully address the Speaker and shall remain in place before proceeding to speak until recognized by the chair.

#### MOTION

REP. BACKES MOVED that the Rules for Decorum be printed in the Journal, which motion prevailed.

#### POINT OF PERSONAL PRIVILEGE

REP. O'SHEA: Madam Speaker: I rise to a point of personal privilege and request that my remarks be printed in the Journal.

Madam Speaker and Members of the Assembly:

As many of you know, former Representative Gordon Matheny passed away on December 27.

Gordon served five terms as a member of this House, and most recently the 1981 Legislative Session.

Representative Hill and I very humbly ask this body to stand for a moment of silent prayer in memory of former State Representative Gordon Matheny.

THE HOUSE STOOD in a moment of silence in memory of former Representative Matheny.

#### MOTION

REP. BACKES MOVED that the House stand at ease to receive the Senate in Joint Session, which motion prevailed.

## JOINT SESSION

The Joint Session was called to order by Speaker Kelly.

## MOTION

REP. MUSHIK MOVED that a committee of two be appointed to escort Lt. Governor Sands to the rostrum, which motion prevailed.

SPEAKER KELLY APPOINTED Representatives Watne and C. Anderson to such committee, and Lt. Governor Sands was escorted to the rostrum.

Lt. Governor Sands was introduced to the Assembly, and Speaker Kelly turned the gavel over to him to preside.

REP. KRETSCHMAR MOVED that a committee of two be appointed to escort Governor Allen I. Olson to the rostrum, which motion prevailed.

PRESIDENT SANDS APPOINTED Senator Nething and Representative Backes to such committee, and Governor Olson was escorted to the rostrum and introduced to the Assembly.

SEN. ERICKSON MOVED that a committee of two be appointed to escort Chief Justice Ralph J. Erickstad to the rostrum, which motion prevailed.

PRESIDENT SANDS APPOINTED Senator H. Christensen and Representative E. Pomeroy to such committee, and Chief Justice Erickstad was escorted to the rostrum.

## MOTION

SEN. PETERSON MOVED that a committee of four be appointed to escort the Justices of the North Dakota Supreme Court, the Chief Clerk of the Supreme Court and other elected officials to the rostrum, which motion prevailed.

PRESIDENT SANDS APPOINTED Sens. Olson and J. Meyer and Reps. Nowatzki and Gates to such committee and the Justices, the Chief Clerk, and elected officials were escorted into the Assembly.

## MOTION

REP. MEIERS MOVED that a committee of four be appointed to escort the district judges and retired district judges to their seating at the front of the chamber, which motion prevailed.

PRESIDENT SANDS APPOINTED Sens. Dotzenrod, Moore and Reps. Hughes and Laughlin to that committee and the judges were escorted to the Assembly.

THE STATE OF THE JUDICIARY

Message By

The Honorable Ralph J. Erickstad

Chief Justice, North Dakota Supreme Court

Chief Justice Erickstad was introduced to the Assembly.

I thank you Lieutenant Governor Sands, Speaker Kelly, Governor Olson, Reverend Dilley, leaders of the Republican and Democratic caucuses in the House and Senate, other members and staff of the Forty-eighth Legislative Assembly, leaders of the State Bar Association, justices, district court and county court judges who have been especially invited to this joint session, state officials, and other distinguished guests, ladies and gentlemen - friends all.

This is the sixth time in the 93-year history of our state and the 48 sessions of the Legislative Assembly that the Chief Justice of our state has been invited to speak to a joint session of the Legislature on the State of the Judiciary. We are very pleased and appreciative that you, the Legislature, have thus recognized the judicial branch of our government in this way.

The State Bar Association, and our court, including our staff, will serve coffee and cookies in the foyer of the Supreme Court during the recess. I hope you will take this opportunity to meet our people. At any time, we would be happy to show you the new Supreme Court facilities for which we are grateful to you. During the recess our staff will be available to conduct tours of our facilities.

Since I last appeared before you, much involving the Judiciary has transpired.

Cases continue to increase in number and complexity, but the constructive responses of the judges, attorneys and court personnel to this problem are encouraging. Committees of the Legislature, the State Bar Association, and the Judiciary have contributed much to our success in coping with the problems.

The cases filed in North Dakota trial courts have increased substantially for an extended period. As a consequence, appellate cases have also increased. Our forecasts indicate no foreseeable change in the upward trend in demand for court services.

We are in the process of change for court services in North Dakota. As I described in 1981, this change has resulted from the greatest constitutional change affecting the judicial branch since statehood. With the initiative of leaders of the Legislative Assembly in 1975, which was confirmed by the voters in 1976, a new judicial article established a unified judicial system.

In subsequent legislative sessions, your study and assessment of alternate ways to implement the new judicial article resulted in the establishment of the new county courts to replace the former county courts with increased jurisdiction, county courts, and county justice courts, and county probate courts and the state funding of a substantial part of district court services.

There are presently twenty-six new county judgeships. Eleven counties elected county judges for a single county and forty-two counties elected judges in multi-county agreement areas of their own choosing.

Incidentally, the county commissioners of Cass County have appointed Cynthia Rothe as a second county judge with Judge Donald Cooke in Cass County because of the heavy caseload there.

All of these county judges are law trained.

Let me recognize these judges here today. Would the county court judges please stand. Thank You.

Today marks a milestone in Judicial progress in North Dakota. I am confident that this will mark the beginning of a better way. Whether or not this becomes a reality lies in the hearts and minds of these twenty-six county judges.

We welcome these judges and, in so doing, impress upon them the great challenge they have, as we express our appreciation to you for the creation of these judgeships in this evolving unified judicial system.

These new county judges join with a group of twenty-six district court judges and our retired district court judges who are the core of our judicial system.

Some of our retired judges have served as surrogate judges in difficult and emergency situations in this biennium with great distinction.

Would these district court judges and surrogate judges please stand and be recognized. Thank you.

These district court judges are also elected by our people. They are robust, and independent thinkers and cooperative professionals of the judicial system. Independence in their case decision-making capacity is what we, as citizens, depend upon for the preservation of our individual freedom. Cooperation as professionals is what makes the unified judicial system work for all of us.

In 1981 the Legislature shifted substantial funding for district court services from the counties to the state. This resulted in an additional appropriation of 8 million dollars which has been carefully administered. Just as we know the status of each

district court case, our State Court Administrator's accounting procedures tell us the status of all appropriated funds in each program area of each judicial district, each month.

At the present time it appears that we will be able to complete the biennium without expending more than ninety-five percent of this appropriated amount. This is as a result of the Governor's request and for this we should thank the Governor at this time.

In the process of implementing this shift of financial responsibilities we have taken several initiatives. We have strengthened the budgeting process for trial courts through the work of the presiding judges and the State Court Administrator. We have established the North Dakota Legal Counsel for Indigents Commission to bring new controls and procedures to the areas of indigent defense services. We have initiated a uniform approach to the protection of valuable court records. We have established a trial court personnel system where none previously existed. These are substantial initiatives in two years, which will mean present and future economies, accountability and fairness.

Earlier I referred to the difficulty some people have had in adjusting to the implementation of the unified judicial system. It has fallen to the presiding judges to ameliorate the problems of adjustment. They have shown patience and courage and good judgment in this important period.

We have continued our efforts to establish the presiding judge as the key trial court administrative authority for all court services in each judicial district of the unified judicial system.

Would the presiding judges please stand as their names are called.

Chief Presiding Judge Douglas B. Heen of the Northeast Judicial District, we regret to say, is home with the flu. We hope he has a quick recovery as we need him badly.

Judge A. C. Bakken, Northeast Central Judicial District;

Judge Wallace D. Berning, Northwest Judicial District;

Judge Norman J. Backes, East Central Judicial District;

Judge Robert L. Eckert, Southeast Judicial District; Judge Eckert is represented here today by Judge John Paulson.

Judge Benny Graff, South Central Judicial District; and

Judge Maurice R. Hunke, Southwest Judicial District.

Please recognize these people for their great service to our state. Thank you.

After consultation with my colleagues on the Supreme Court, and pursuant to Administrative Rule 2-1981, I have reappointed each of these leaders to the position of presiding judge for an additional three year term. This is a reaffirmation of my confidence in the leadership shown by these men on behalf of the citizens of North Dakota.

This step also introduces the term concept to presiding judgeships which I have not heretofore applied, but which is recommended by the American Bar Association standards relating to court organization.

These presiding judges have been given important responsibilities and authority for the improvement of the administration of our court system in each judicial district. Over the biennium we have encouraged the presiding judges to meet regularly as a group to review administrative matters and to communicate their views to our court. With this advice, our Court Administrator, William Bohn, has been able to recommend administrative policies for our court's adoption which have not only been workable and practicable, but also acceptable to the great majority of our judges and court personnel.

The district court and county court judges are a team within each judicial district, a team dedicated to deliberate, wise, efficient and prompt court services. It will be imperative this coming biennium to hold district meetings, to weigh different views, and to forge practical procedures and cooperative understandings to improve and coordinate our services to the citizens of North Dakota, if we are to continue to improve court services from within the judiciary.

After widespread opportunity for comment and discussion, the Supreme Court has adopted rules relating to the duties and qualifications of magistrates as required by Section 27-07.1-07 of the North Dakota Century Code. These rules will aid our new county court judges in the administration of their courts.

In 1980 we implemented the historic docket currency standards for the district courts. These standards generally require criminal case dispositions within one hundred twenty days after the date of filing, and civil dispositions within twenty-four months of the date of filing of the complaint. Judgments in civil cases must be entered within ninety days of the end of trial. These are the outer limits. Most of our district court cases are decided much sooner than this. This rule is especially designed to eliminate the old, undecided cases which, in the past, lay undecided and festering within the system.

I am pleased to tell you today that the dockets of the district courts in North Dakota are in a good condition. Each judicial district has met the standards as of May 1, 1982, and has done so with a cooperative and energetic spirit.



Recently, the Supreme Court has adopted amendments to this docket currency rule, to improve its administration and efficiency, and to extend its coverage to certain county court cases. This marks an additional step in providing you and the citizens of North Dakota a measure of accountability for the prompt disposition of the cases in these trial courts.

We have continued to make progress in our efforts to improve the judicial system statewide. Under the direction of our State Court Administrator, William G. Bohn, and with the assistance of the representative advisory committees, we have made substantial improvements. Please see my printed remarks for details.

We are very grateful to the members of the advisory committees, some of which I have listed in my printed remarks, but I will not take your time to list them now. We thank them for their great service.

Judge participation in the court improvement decision-making process is the cornerstone of a sound judicial system. Each justice of the Supreme Court and each judge of district court has been invited to serve on one or more of the major committees which advise the Supreme Court. In due course, each county judge will have similar opportunities to serve. Such service by judges, in addition to case responsibilities, reflects great sacrifice. Such service is essential to our future and a major component of the strength of this unified judicial system.

I stress again that we are committed to encouraging broad public interest and participation in improving court services, and we are very pleased with the contributions of the advisory committees, in which, in addition to judges and lawyers, legislators and members of the general public serve without pay. The open Supreme Court rulemaking and administrative processes are working well, notwithstanding that some may voice disagreement with particular proposals. That is the nature of the democratic process. Further experience with these processes and further study will, no doubt, result in some modifications in the future.

There are several legislative issues affecting our services which I would like to bring to your attention today.

First, there is a widespread and growing concern about the future caseload of the Supreme Court. Caseload projections prepared for the Judicial Planning Committee indicate new Supreme Court case filings of over four hundred cases in 1985 and nearly five hundred cases in 1987, which compare with three hundred nine cases in 1981. The Judicial Planning Committee proposed a legislative study resolution, subsequently approved by the Judicial Council and the Supreme Court, which is presently pending before this Legislative Assembly. The resolution seeks a Legislative Council "...study of the present and projected North Dakota Supreme Court caseload and of methods for the appropriate

structure and administration of appellate court services in the interest of justice..."

There are many ways of aiding us in the delivery of appellate court services. There is much experience from other states which can be profitably reviewed. We urge your favorable consideration of this resolution, presently cosponsored by Speaker Tish Kelly and Representative William Kretschmar and Senator Frank Wenstrom and Senator Rolland Redlin.

This does not reflect a present crisis. The Supreme Court of North Dakota presently maintains a current docket. It does, however, indicate a problem for the future which, if not studied and resolved, could become a crisis in the future.

Second, there is the growing problem of retirement benefit equity among the judges. Inequity in benefits among classes of state funded judges undermines both efficiency and morale. I am pleased to inform you that the Legislative Council's Retirement Committee, chaired by Representative Bob Martinson, has recommended a proposal which makes judicial retirement more equitable and will encourage the most qualified attorneys to seek to serve their most productive years on the bench.

The proposal provides for an improved benefit for district court judges and Supreme Court Justices participating in the Public Employees Retirement System and requires an increased contribution to five percent of salary by those participants. After many efforts to resolve this problem of equity, I am pleased to tell you that I am informed that the retirement committee proposal is fully supported by the judges and the State Bar Association of North Dakota.

You have an excellent opportunity during this session to resolve this problem. I urge your favorable consideration of this proposal.

Luella Dunn continues to provide very important services to the Supreme Court. Because of her service to this court for thirty-five years, on September 1, 1982, we recognized her at a special session of the Supreme Court. This year, Luella brought national recognition and honor to our state by being elected president of the National Conference of Appellate Court Clerks. It is with pleasure at this time that I ask her to please stand and be recognized by all of us. Congratulations, Luella. I thank you very much.

In addition to their opinion writing duties, the Justices of the Supreme Court are assuming many important additional responsibilities. These services performed by our justices, although little publicized, are crucial to the effective administration of our judicial system.

We are progressing well in a new era for the Judiciary of North Dakota. The new judicial article has established a unified judicial system. We in the Judiciary are moving firmly to carry out the responsibilities placed upon us by the citizens and by this Legislative Assembly. We depend upon you for assistance in this constructive effort, for we cannot make the necessary changes or maintain the improvements we have initiated unless we have your support. How you support us will determine whether or not we have a judicial system which affords justice equally, fairly, and efficiently throughout our state.

Justice is a promise seeking fulfillment. It is the function of the legislative branch to provide for the resources by which it may be best achieved. It is the responsibility of the leadership of the Judiciary to translate those resources wisely and prudently into improved court services for the citizens of our state.

Before I close today, I would like to recognize the members of the Board of Governors of the State Bar Association who are here today. Would they please stand. Thank you.

When we recess, I hope to visit with you personally, but, should we miss each other, please stop by to see me or my colleagues in my office at your convenience.

Ours is a common task to strengthen the processes of justice. As Justice Robert H. Jackson said so well in 1953:

"There is no such thing as an achieved liberty; like electricity, there can be no substantial storage and it must be generated as it is enjoyed, or the lights go out."

I thank you very much.

#### MOTIONS

REP. STRINDEN MOVED that the address of Chief Justice Erickstad be printed in the Journal, which motion prevailed.

REP. BACKES MOVED that the Joint Session be dissolved, which motion prevailed.

The House reconvened, with Speaker Kelly presiding.

#### REPORTS OF STANDING COMMITTEES

MADAM SPEAKER: Your Committee on State and Federal Government to which was referred HB 1107 has had the same under consideration and recommends by a vote of 16 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING that the same DO PASS.

REP. L. HANSON, Chairman

HB 1107 was placed on the Eleventh order of business on the calendar for the succeeding legislative day.

MADAM SPEAKER: Your Committee on State and Federal Government to which was referred HB 1108 has had the same under consideration and recommends by a vote of 15 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING that the same DO PASS.

REP. L. HANSON, Chairman

HB 1108 was placed on the Eleventh order of business on the calendar for the succeeding legislative day.

MADAM SPEAKER: Your Committee on Education to which was referred HB 1123 has had the same under consideration and recommends by a vote of 17 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING that the same DO PASS.

REP. JACOBSON, Chairman

HB 1123 was placed on the Eleventh order of business on the calendar for the succeeding legislative day.

#### MOTIONS

REP. BACKES MOVED that the absent members be excused, which motion prevailed.

REP. BACKES MOVED that the House stand adjourned until 2:00 p.m., Thursday, January 6, 1983, which motion prevailed.

The House stood adjourned pursuant to Representative Backes' motion.

CHARLES FLEMING, Chief Clerk