

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Tuesday, July 24, 2007
Prairie Room, State Capitol
Bismarck, North Dakota

Representative Lee Kaldor, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Lee Kaldor, Dwight Wrangham; Senator Arden C. Anderson; Citizen Members Randy Bina, Linda Coates, Ron Krebsbach, Rodney Ness, Bev Nielson, Greg Sund, Ken Yantes

Members absent: Senator Dwight Cook; Governor John Hoeven

Others present: See attached [appendix](#)

At the request of Chairman Kaldor, commission counsel reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council](#).

STATUTORY AREAS OF STUDY

At the request of Chairman Kaldor, commission counsel presented a memorandum entitled [Advisory Commission on Intergovernmental Relations - Background Memorandum](#).

Chairman Kaldor invited the commission members and interested members to suggest topics the commission might study. The following is a list of those suggestions:

1. Zoning of feedlot operations.
2. Increase from four-tenths to five-tenths of one cent the amount of sales tax that is deposited in the state aid distribution fund.
3. Funding for rural township and county roads and bridges.
4. Charitable property tax exemptions.
5. Elimination of reference to mills in the North Dakota Century Code (NDCC) by replacing the term with dollar amounts.
6. Funding for public transportation.
7. Creating a regional and interstate transit authority.
8. Provision of state's attorney's services in counties without a resident state's attorney.

Zoning of Feedlot Operations

Mr. Terry Traynor, North Dakota Association of Counties, provided testimony in support of the study of the zoning of feedlot operations. He said House Concurrent Resolution No. 3061 was adopted by the 60th Legislative Assembly but was not prioritized by the Legislative Council. He said the resolution included a study of the zoning of feedlot operations. He said there needs to be a procedure through which

townships and counties work together with the State Department of Health for a seamless and meaningful permitting process for feedlot operations. He said Senate Bill No. 2278 (2007) requires the State Department of Health to operate an electronically accessible central repository for all county and township zoning regulations that pertain to concentrated feeding operations. He said this bill may need to be monitored by the commission to see if any legislative changes need to be made.

Representative Kaldor said House Concurrent Resolution No. 3061 was not prioritized as a means of reducing the volume of studies. He said he did not remember any great negative response to the resolution.

Ms. Nielson said previous legislation on feedlot operations was not enacted because the interested parties said they would work among themselves to address any problems. She said this commission is a good forum for those parties to work through.

Mr. Krebsbach said there will be an ethanol plant in his area and perhaps as a result, a feedlot. He said this will produce an expense to the county with hardly any money coming in because this is agricultural property.

Mr. Sund said the study of zoning for animal feedlots may include a study of the classification of agricultural and industrial property for taxation purposes.

Ms. Coates said the impact of a large animal feedlot operation is broader than a township's zoning jurisdiction.

Mr. Yantes said townships should not lose zoning authority but there are areas in which the impact of feedlots is great and the commission should study these areas. He said it is best to have the most local form of government make the decision regarding zoning.

Representative Kaldor said there was no objection to the study by commission members and it was a worthy area of study.

Increased Funding of State Aid Distribution Fund

Mr. Traynor provided testimony in support for increasing from four-tenths to five-tenths of one cent of the first penny of sales tax, the amount of sales tax that is deposited in the state aid distribution fund. Except for school funding, he said, the state aid

distribution fund is the only transfer of general fund money from the state to local governments. He said House Bill No. 1447 (2007) would have increased the funds in the state aid distribution fund, but the bill did not pass the House. He said an increase in funding would have an impact on levies and hence property taxes. He said fund revenue is growing because it is tied to sales and use taxes. He said money from the fund has increased from 15 percent to 19 percent of the money used to fund county operations. He provided a handout on the approximate mill value impact of increasing from four-tenths to five-tenths of one cent the money that goes into the state aid distribution fund. A copy of the handout is on file in the Legislative Council office.

In response to a question from Representative Kaldor, Mr. Traynor said the fund was meant as a replacement for personal property tax revenue.

In response to a question from Ms. Nielson, Mr. Traynor said increased funding from the state aid distribution fund would free up money now collected from property taxes; however, he said it would not necessarily roll back property taxes.

Ms. Coates said the study of the state aid distribution fund is timely because of the interest in creating the policy of having a fair balance of taxation.

Representative Kaldor said the interim Taxation Committee is studying the feasibility and desirability of property tax reform in providing property tax relief to taxpayers of the state as a result of Senate Bill No. 2032 (2007). He said the state aid distribution fund is a form of property tax relief.

Funding of Rural Roads and Bridges

Mr. Ken Yantes, North Dakota Township Officers Association, provided testimony in support of studying funding of rural township and county roads and bridges. He said last session Senate Bill No. 2275 failed to pass. He said the bill would have provided \$4 million for county and township roads and bridges. He said the bill failed to pass by a narrow margin and the support of the commission may change the fate of a bill similar to that bill in a future legislative session.

In response to a question from Representative Kaldor, commission counsel said as a result of Senate Bill No. 2178 (2007), the interim Taxation Committee is studying the allocation of oil and gas tax revenues to or for the benefit of political subdivisions with emphasis on determining whether allocations sufficiently address oil and gas development infrastructure impact to political subdivisions. He said the interim Transportation Committee is studying highway funding and transportation infrastructure needs, including those needs resulting from energy and economic development in this state as called for in House Bill No. 1012 (2007). He said the commission should coordinate any study of funding of county and township bridges and roads with these two committees to avoid unnecessary duplication.

Mr. Ness said he is a county road supervisor and supports study of funding township and county roads and bridges.

Representative Kaldor said the interim Transportation Committee is looking at the highway funding and transportation needs. He said the commission could focus on funding that keeps up with inflation to avoid duplication.

In response to a question from Ms. Nielson, Mr. Yantes said approximately half the funding of township roads comes from one cent of gas tax and half comes from landowners in the townships through property taxes.

Charitable Property Tax Exemption

Mr. Sund presented testimony in favor of defining the charitable property tax exemption. He said state law provides for an exemption for charitable property from property taxes if used in whole or in part for charitable purposes. He said the term "in part" is not adequately defined by state law. He said the term "in part" should be defined by the amount of revenue, the cost of providing charitable services, or by square footage. He said a doctor's clinic that is associated with a charitable hospital is tax-exempt even though it generates taxable income. He said colleges and universities also have a tax exemption that is stretched by placing private businesses on campuses.

Mills to Dollars

Mr. Sund presented testimony in support of a study to change mills to dollars. He said placing taxes in terms of mills confuses and complicates. He said the taxes should be changed to dollars per thousand dollars. He said this would provide more transparency in the taxation structure.

Ms. Nielson said this idea was addressed last interim in the interim Taxation Committee. She said there was discussion of placing a dollar amount on ballot initiatives and property tax bills, in addition to the mills. She said removing mills from the North Dakota Century Code would be a major undertaking.

Ms. Coates said the change may have a great impact on financial officers and auditors in political subdivisions.

In response to a question from Representative Kaldor, Mr. Sund said when "dollars per thousand dollars" is used, then issues of confusion on tax statements relating to assessed, taxable, and full and true value are addressed.

Representative Wrangham said the Constitution of North Dakota uses the term "mills" and any change may require a constitutional change.

Transit Funding

Mr. Jim Gilmour, Planning Director, Department of Planning and Development, provided testimony in favor of studying transit funding. He said there was a threefold increase in federal funding for the city of Fargo. He said there was a 20 percent match for capital improvements and a 50 percent match for

operational expenditures. He said the match comes from property taxes and registration fees.

Ms. Coates said there was unused federal money for cities for transit after the last legislative session.

In response to a question from Ms. Nielson, Mr. Gilmour said there is no match required for the state money that Fargo uses to match federal money.

Transit Authority

Ms. Coates presented testimony in favor of a cross-jurisdictional transit authority. She said Fargo and Moorhead may need a cross-jurisdictional transit authority with taxing authority. She said the study may form a consensus in this state which may be brought to Minnesota for that state to evaluate. She said a taxing authority that crosses state lines is complex; however, the problems of transit are regional and multistate. At present, she said, Fargo and Moorhead are putting equal amounts of money into funding the combined transit system. She said a larger regional entity would help coordinate that transit system.

In response to a question from Ms. Nielson, Ms. Coates said Fargo and Moorhead use the same 911 system.

State's Attorneys

In response to a question from Representative Kaldor, Mr. Traynor said the State's Attorneys Association is a member of the North Dakota Association of Counties. He said the state's attorneys asked for a study by the North Dakota Association of Counties to look at the problem for filling state's attorney's positions in rural areas and the problems in present law that place hurdles to sharing state's attorneys. He said any change would require legislative changes, and he thinks the state's attorneys will welcome the study of this area by the commission.

Mr. Krebsbach said counties may work together now to have a state's attorney. He said if a district attorney system were established, it would hurt the counties; however, the provision of state's attorney's services should be studied.

In response to a question from Mr. Sund, Mr. Traynor said state's attorneys are elected officials and a county commission may appoint a state's attorney if not filled by an election, but the appointed state's attorney must have the same qualifications as an elected state's attorney--be a resident and be an attorney. He said two counties may agree to elect a person as a state's attorney who resides in one of the counties. He said a county may hire a private counsel if given the authority to do so by the state's attorney.

Representative Kaldor said the interim Taxation Committee is studying political subdivision efficiencies and a study of state's attorneys should be coordinated with the Taxation Committee to avoid undue duplication. However, he said, the problem with placing state's attorneys is with the law, not about creating efficiencies.

Other Testimony

Mr. Jerry Hjelmstad, North Dakota League of Cities, provided testimony to the commission. He said the cities will have their annual conference in September and he will bring any issues raised at the conference to the commission.

STUDY OF EXTRATERRITORIAL ZONING

At the request of Chairman Kaldor, commission counsel presented a background memorandum entitled [Extraterritorial Zoning Authority of Cities - Background Memorandum](#).

In response to a question from Representative Kaldor, commission counsel said under NDCC Section 54-35-02, the Legislative Council has the authority to study any subject upon which "the legislative assembly may legislate." He said the Legislative Council may call to its assistance other members of the Legislative Assembly, create committees consisting of a member of the Legislative Council and other members of the Legislative Assembly, and delegate by written resolution to these committees other duties of the Legislative Council. He said the committees may be made up of nonlegislative members. He said under Section 54-35.2-02, the Legislative Council designates the chairman and vice chairman of the Advisory Commission on Intergovernmental Relations and the commission presents reports and recommended legislative bills to the Legislative Council in the same manner as interim Legislative Council committees. Under Section 54-35.2-05, he said, the Legislative Council may accept, reject, or amend the report of the commission.

Mr. Curly Haugland, Landowners Association of North Dakota, provided testimony in opposition to the commission studying extraterritorial zoning authority. He said the commission is not a legislative committee because it is made up of members of local governments and these members exceed the number of legislative members.

Ms. Donna Bye, Minot City Planner, provided testimony on the use of zoning regulations in Minot. She said Minot has a two-mile extraterritorial zoning authority. However, the city does not want to lose the opportunity to go to four miles. She said there is not much property within city limits that is undeveloped. She said of the 13 members of the zoning commission, 3 members are from the extraterritorial area. She said the extraterritorial zoning authority allows the city of Minot to provide services that are asked for by people of the extraterritorial zoning area. She said extraterritorial zoning allows the city to provide land for large businesses that may want to move around or in the city.

In response to a question from Representative Wrangham, Ms. Bye said the services provided outside city limits include sewer and water. She said there was a rural subdivision that was subdividing the lots in the subdivision and creating problems with septic systems. She said this subdivision is charged

100 percent of costs of sewer and water but the cost would be reduced by approximately half if the subdivision were annexed. She said if a large business moved into an area within the extraterritorial zoning authority that is allowed under the master plan, the business would be annexed.

Mr. Steven Zimmer, city of West Fargo, presented testimony on zoning in West Fargo. He said West Fargo has extended its extraterritorial zoning authority to two miles. He said there would be problems if it was one mile. For example, a developer wanted to place a 600-lot subdivision within 1.5 miles of the city and wanted to use septic systems. He said the subdivision would now be part of West Fargo and the residents in the subdivision would have to pay three times more to be on the city sewer and water than if there would not have been extraterritorial zoning and septic systems. He said the zoning commission has two members from the county area and one member at large of a seven-member board. He said West Fargo includes political subdivisions and neighboring jurisdictions in the process when zoning in extraterritorial areas. He said the city controls flooding regulation within the extraterritorial area because the county and townships do not have the manpower during the permitting process to check elevations and do other work.

Mr. Gilmour provided maps of Fargo's extraterritorial zoning areas. He said the city expands a mile every one or two years. A copy of each map is on file in the Legislative Council office.

In response to a question from Representative Kaldor, Mr. Gilmour said there are 11 members on the planning and zoning commission and 3 members are from the extraterritorial zoning area.

In response to a question from Ms. Nielson, Mr. Gilmour said it takes about 10 years to annex after adding an area through extraterritorial zoning authority. He said if the distance were reduced to two miles, then it would take less than 10 years before annexation.

In response to a question from Representative Wrangham, Mr. Gilmour said the city does not always keep the extraterritorial area at the maximum

distance. He said the extension has not been automatic and is evaluated based upon development potential. He said when the extraterritorial zoning authority was limited to two miles, extension of the authority was more automatic. He said it is difficult to get people on the planning and zoning commission from the extraterritorial area because most of the issues the commission deals with relate to the city. In addition, meetings are televised and most people are not as interested in being on television. He said the planning and zoning commission meets twice a month--once from 8:00 a.m. to 12:00 noon and once for a one-hour noon meeting.

Mr. Sund said development is not uniform and sometimes a city might need to have zoning authority that extends past the extraterritorial zoning authority limit and sometimes a city may not need to use the whole area allowed.

Representative Kaldor said Grand Forks increased the minimum size of the lots when invoking extraterritorial zoning as opposed to making a maximum limit as in most cities.

REPORT OF THE COUNTY DOCUMENT PRESERVATION FUNDS

Mr. Traynor provided information on the duty of the North Dakota Association of Counties to provide a report on how each county has used the county's document preservation fund during the preceding two years. He said the association is in the process of gathering the information. He said the association should have the information shortly after the first of the year and would be able to provide a report on the preceding two years.

No further business appearing, Chairman Kaldor adjourned the meeting at 2:05 p.m.

Timothy J. Dawson
Commission Counsel

ATTACH:1