

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Wednesday, October 7, 1998
Harvest Room, State Capitol
Bismarck, North Dakota

Senator Tony Grindberg, Chairman, called the meeting to order at 9:05 a.m.

Members present: Senators Tony Grindberg, Jerry Klein; Representative Leonard J. Jacobs; Citizen Members Randy Bina, Erling Karlsbraaten, Bill Sorensen, Ken Yantes; Governor Edward T. Schafer's representative Carter Wood

Members absent: Representative Jim Torgerson; Citizen Members Jeff Fuchs, Stan Lyson

Others present: See attached appendix

It was moved by Senator Klein, seconded by Citizen Member Yantes, and carried that the minutes of the May 8, 1998, meeting be approved as distributed.

SHIFTING OF LIABILITY FROM STATE TO POLITICAL SUBDIVISIONS

Chairman Grindberg called on Ms. Connie Sprynczynatyk, North Dakota League of Cities, for comments regarding concerns representatives of political subdivisions have expressed with respect to being required to accept liability when contracting with the state. Ms. Sprynczynatyk said Citizen Member Fuchs had raised this issue at previous meetings but was unable to attend this meeting. She said it was her understanding that there is some concern regarding the state shifting risk to political subdivisions even after legislation (North Dakota Century Code Section 32-12.2-13) was adopted last session which was intended to restrict the shift of liability. She said political subdivisions are willing to accept their own risk but do not want to also accept the liability of the state. Although there are fewer problems now than before the 1997 legislation, she said, there are some residual effects regarding the acceptance of liability by political subdivisions. She said it is her understanding that the Department of Transportation is the agency primarily responsible for shifting liability to political subdivisions. She said Citizen Member Fuchs indicated that his primary concern was the requirement that a Jamestown taxi transit service be required to have \$1 million in liability insurance.

Chairman Grindberg called on Mr. Steve Spilde, North Dakota Insurance Reserve Fund, for comments regarding the issue of the shift of liability from the state to political subdivisions. Mr. Spilde submitted

written comments, a copy of which is on file in the Legislative Council office.

Mr. Spilde said the North Dakota Insurance Reserve Fund is a government self-insurance pool that provides insurance for most political subdivisions in the state. When state agencies responded to the loss of sovereign immunity in 1995 by attempting to contractually transfer risk to political subdivisions, he said, the North Dakota Insurance Reserve Fund excluded the risk transfer from its members' coverage because it was unable to quantify the additional risk being assumed. However, he said, the fund was later able to provide additional insurance for its members at an additional charge when members assumed additional risk. He said the fund supported legislation in the 1997 legislative session which addressed that problem. He said legislation has improved the situation, and there are fewer contractual risk transfers being proposed by state agencies. He said the fund continues to advise its members to resist signing risk transfer agreements.

Chairman Grindberg called on Ms. Jo Zschomler, Director, Risk Management Division, for comments regarding the issue of transfer of liability. Ms. Zschomler submitted written testimony, a copy of which is on file in the Legislative Council office.

Ms. Zschomler said she has worked closely with state agencies to address the issue of transfer of risk after the 1997 legislation was adopted. She said state agencies were advised that the intent of the legislation was that the state and political subdivisions should not attempt to transfer liability or associated defense costs to each other as a routine matter in contracts. She said state agencies were also advised to use the limited indemnification form in most contracts between state agencies and political subdivisions so that each party agrees to assume liability and expenses for their own actions. However, she said, under unique contractual circumstances where limited indemnification would not be appropriate, state agencies were advised to use indemnification language that requires each party to assume liability for its own acts but requires one party to be responsible for the expenses for the joint liability of the parties. She said such an agreement would be appropriate when:

1. The benefit to the contracting political subdivision is much greater than to the state.
2. It would be an inappropriate use of state taxpayers' funds to pay costs associated with claims arising from the agreement.
3. The state has no control over the activities of the political subdivision or its agents related to the agreement.

Mr. Bruce Murry, Department of Transportation, said of the approximately 700 contracts entered by the department during the biennium, fewer than 10 contracts were with political subdivisions relating to transit agreements such as the agreement that caused concern for Citizen Member Fuchs. He said because those agreements are unique and meet the requirements set forth by the state risk manager, the department has included language requiring the persons providing the transit services to provide insurance coverage. He said the department will review the coverage limits to try to strike a balance so that transit providers are not overly burdened financially when providing insurance coverage.

In response to a question from Senator Grindberg, Mr. Murry said most transit agencies were carrying larger insurance coverage amounts than the Jamestown service. Therefore, he said, most transit providers were not impacted to the extent that the Jamestown provider was.

COUNTY RESTRUCTURING STUDY

Chairman Grindberg called on Mr. Mark Johnson, North Dakota Association of Counties, for comments regarding county advisory study processes. Mr. Johnson submitted written testimony, a copy of which is on file in the Legislative Council office.

Mr. Johnson said the only legislative mandate in the "tool chest" legislation enacted in 1993 was the requirement that an advisory study committee be appointed to study county and city government in each county and city or to place a question on the ballot asking the voters if they would like a committee appointed. He said the North Dakota Association of Counties was requested by a number of counties to assist in developing resources for the counties to use in beginning an advisory committee study. He said the NDSU Extension Service and the United States Department of Agriculture rural development office aided in establishing a three-phase process to be used by counties in implementing the advisory study process.

Mr. Johnson reviewed the results of the advisory study committee process in 18 counties. He said the process in each county varied, and the processes probably did not uncover much information that will make a great difference in the future. However, he said, the process did get people together to discuss important issues. In general, he said, there was a lack of public input during the advisory study committee process in the various counties. He said

the North Dakota Association of Counties shared the cost of the services provided by the Extension Service with the counties that used the Extension Service process. He said the average cost for each county was approximately \$1,000.

Ms. Kathleen Tweeten, NDSU Extension Service, said Phase 1 of the study process was to present information to prepare for the study process. She said the type of information provided included demographic information such as population, age, gender, education levels, employment, income levels, taxable sales, and crime levels for each county. In addition, she said, information was presented relating to county government operations such as revenue, expenses, and comparisons among the various counties. She said the initial phase of the study process also provided information to the participants regarding what other counties have done and asked whether the county should proceed to Phase 2, the strategic planning process.

Ms. Tweeten said during Phase 2, the facilitators helped move into the planning process in which they attempted to identify the stakeholders in the process and the needs of the people, to frame the various issues, to look at a broad vision for the future, to develop objectives, and to develop action steps. She said Phase 3 of the process is to implement the recommendations. In implementing the recommendations, she said, technical assistance would likely be needed from entities such as the North Dakota Association of Counties and the North Dakota League of Cities.

In response to a question from Citizen Member Yantes, Mr. Johnson said counties tried to inform citizens regarding the process and attempted to appoint nonelected officials to the study committees to involve more people in the process. He said it was important to get the citizens to view the process as an opportunity, not a threat.

In response to a question from Senator Grindberg, Mr. Johnson said the only county to conduct a process that would qualify as an advisory study process before 1998 was Richland County, which conducted a home rule charter study. He said of the studies that were conducted, land use was often identified as a major concern of the participants. In addition, he said, there were strong concerns regarding state mandates, particularly with respect to restructuring of county governments.

In response to a question from Mr. Wood, Mr. Johnson said the land use issues that were expressed related to encroachment of development on existing uses and issues related to property taxes.

Senator Klein said it is important that the state not force local governments into consolidation. He said local officials do not want state mandates but are willing to consider sharing services when feasible.

Mr. Johnson said local governments need local autonomy but are also looking for help to implement

local decisions and may need a structure to help the implementation process.

Senator Grindberg said counties and cities must convey what they are doing to state policymakers. He said the advisory study process should probably be done more frequently.

Ms. Linda Rohrbach, McIntosh County Deputy Auditor, said counties have been sharing services for several years. However, she said, it often costs as much or more to share services as it does to have a full-time county official. She said many counties are losing residents and need to keep accessible whatever services they are providing or face a further decline in population.

Mr. Ralph Olson, North Dakota Township Officers Association, said the consolidation of county services is not as frightening a prospect as are proposals to change township boundaries. He said a resolution presented at the last meeting of this commission which would allow townships to change counties is a very poor idea.

In response to a question from Citizen Member Yantes, Mr. Olson said the North Dakota Township Officers Association is not in favor of the resolution and does not favor further study of the idea of allowing townships to move to a different county.

Chairman Grindberg called on Ms. Kathy Hogan, Director, Cass County Social Services, for comments regarding consolidation of services by social service agencies. Ms. Hogan submitted written testimony, a copy of which is on file in the Legislative Council office.

Ms. Hogan said county social service agencies have been very active during the last six years with respect to consolidation of services. She said a preliminary study in 1994 of the roles of county social services and the basic cost of providing core services was done in conjunction with an interim legislative committee. She said the study resulted in a focused discussion regarding the role of county social service agencies, and the committee accepted a vision statement for county social services that describes the core and related services that are provided through the county social service system. She said the vision statement accurately reflects the types of services available throughout the state and is used in program design, development, and evaluation. In addition, she said, the study resulted in the largest restructuring of the financial relationship between the state and the counties for the administration of economic assistance programs since 1930. She said the legislation resulting from the study transferred the county share of benefit costs from the counties to the state and the local administrative costs from the state to the counties. One of the primary objectives of the legislation, she said, was to encourage local financial responsibilities and accountability for local programming. She said the legislation, which became effective in 1998,

is clearly impacting the design and delivery of economic assistance services.

Ms. Hogan reviewed the results of a study conducted in April of this year regarding shared county services. She said the shared services include shared administration, shared economic assistance programs, shared children and family services, and shared adult service programs. She said administration is one of the first areas to consolidate, particularly in light of the fact that many social service directors have retired or resigned in the last few years. She said the arrangements for shared services vary, but most agreements are reviewed annually. With respect to programming issues, she said, cross-county sharing and purchasing of services has exploded over the last four years. She said changing demographics and decreasing federal funding have promoted a willingness to look at sharing services. She said one of the main issues to be addressed relates to funding of programs because of the variety of methods through which the various programs receive funding. She said children and family services programs require substantial specialization, and small counties often are not able to provide these specialized services without contracting with other counties and sharing employees.

In response to a question from Citizen Member Sorensen, Ms. Hogan said the County Directors Association finance committee is currently undertaking a comprehensive study to track administrative costs. She said the preliminary results appear to indicate that administrative costs have been reduced as a result of consolidation. She said the study should be complete by January 1999.

In response to a question from Senator Grindberg, Ms. Hogan said social service directors and county officials are continuing to examine methods through which services can be provided more effectively. She said multicounty social service units will likely increase in the next few years, and she would not be surprised to see 18 to 20 administrators providing administration for the 53 counties.

Mr. Johnson said 40 to 45 percent of county budgets are related to social services. He said consolidation in the social services area has been easier in part because county social service directors are not elected. Therefore, he said, county commissioners have more flexibility to address consolidation in that area. He said consolidation has also been somewhat easier in the area of county highway departments because highway departments are not headed by elected officials.

MILL LEVY CONSOLIDATION

Chairman Grindberg called on Mr. Steven Neu, North Dakota Recreation and Parks Association, for a presentation regarding the consolidation of mill levies for park districts. Mr. Neu submitted written

testimony, a copy of which is on file in the Legislative Council office.

Mr. Neu said the commission proposed two bills during the previous interim regarding mill levy consolidation and suspension of mill levy limits. However, he said, the 1997 Legislative Assembly did not adopt the proposals. He said park district mill levies may be divided into six basic categories:

1. General operating levies;
2. Bonds;
3. Personnel;
4. Judgments;
5. Levies for which votes are required; and
6. Miscellaneous levies.

Mr. Neu said there is a total of over 88 mills provided for park districts. He said park districts need the flexibility to use the allowed mills in ways that are not restricted such as the current law. He said 40 to 80 percent of park district revenues come from sources other than mill levies. He said the general operating levies total 36.5 mills. Of the eight major park districts in the state, he said, most are levying almost 30 mills. He said the levies related to special assessments should remain separate because the majority of the need is assessed by the city for special improvement district projects adjacent to park property, and the development bonds should also remain separate because approval would be by choice of the community with a 60 percent approval required. With respect to the levies relating to personnel, he said, the 30-mill social security levy should remain separate because it is contingent upon payroll and the federal government. He said the pension levy also would remain separate because it relates to personnel and provides a pension plan for full-time employees. He said the levies for judgment bonds, judgments for injury claims, and interest and principal on bonds issued to pay judgments should also remain separate. With respect to the levies that require voter approval, he said, an additional three mills are provided by a majority vote of the people in excess of the allowed two mills. He said one-half mill is allowed by a majority vote of the people for handicap programming and a one-mill levy is provided for general fund reimbursement for prepaid plant pest control expenses upon 60 percent approval of the voters. He said the miscellaneous levies include four mills for a municipal airport, four mills for an airport authority, and four mills for railroad purposes. He said all the miscellaneous levies could be removed from the park district law which would reduce the mill levy total by 12 mills because there is no need for those levies.

Mr. Neu said the general operating levy could be established to provide a maximum of 39 mills which would allow park districts to increase from the current levies. However, he said, the increases would be limited to either a three percent maximum growth over the previous year or by allowing the residents of the community to increase operating mills by a vote of the

people. Nonetheless, he said, there would still be an ultimate cap on the total number of operating mills.

In response to a question from Senator Grindberg, Mr. Neu said park districts do not have home rule authority. Therefore, he said, park districts are not able to consolidate mills such as is done by some cities and counties.

In response to a question from Citizen Member Sorensen, Mr. Neu said health insurance is a major concern for park districts. He said the existing levies are generally unable to cover the cost of insurance.

Ms. Sprynczynatyk said home rule cities are able to consolidate levies and often reduce the total levy because of the flexibility resulting from consolidation. She said the League of Cities legislative committee supported the proposals during the last legislative session to consolidate mill levies or suspend mill levy limitations. She said state budgets have grown over the years, but political subdivisions have not been allowed to increase their property tax levies. She said smaller communities are particularly in need of additional flexibility to fund local services.

Ms. Sprynczynatyk submitted a copy of the 1997 legislation that would have suspended mill levy limitations for cities, counties, and park districts for two taxable years (Senate Bill No. 2022). She said that the commission may desire to consider proposing a similar bill to suspend levies for the next two years.

Citizen Member Sorensen said he supports the idea of suspending mill levy limitations, and he also views mill levy consolidation as a good option. He said he is sure that a review of consolidated levies in home rule cities would indicate that there is a general reduction in the total amount of mills levied as a result of the additional flexibility.

Chairman Grindberg said he generally supports the idea of suspending mill levy limitations. However, he said, due to the fact that this will be the last meeting of the commission during the interim, the commission will not be able to take any further action in that respect.

Citizen Member Yantes said he agrees that it is too late in the interim to propose a mill levy consolidation. However, he said, he is very concerned with the lack of flexibility political subdivisions have regarding mill levies and mill levy limitations.

LOCAL GOVERNMENT EFFICIENCY PLANNING GRANT PROGRAM

At the request of Chairman Grindberg, commission counsel reviewed a bill draft that would repeal the local government efficiency planning grant program. Commission counsel said the local government efficiency planning grant program has not been funded by the Legislative Assembly during the last two bienniums.

Mr. Johnson said he supports the bill draft because it is not likely that the local government efficiency planning grant program will be funded in the

near future. He said the program could be reinstated at a later time if there is a legislative desire to restart the program.

Citizen Member Yantes said although the local government efficiency planning grant program served a purpose, the process took a lot of time from the deliberations of the commission.

Citizen Member Sorensen said the local government efficiency planning grant process stimulated several good projects. However, he said, the process became the only focus of the commission and resulted in the misuse of a lot of commission time.

It was moved by Citizen Member Yantes, seconded by Senator Klein, and carried on a roll call vote that the bill draft relating to the repeal of the local government efficiency planning grant program be approved and recommended to the Legislative Council. Senators Grindberg and Klein; Representative Jacobs; Citizen Members Bina, Karlsbraaten, Sorensen, and Yantes; and Mr. Wood voted "aye." No negative votes were cast.

Chairman Grindberg said although the questions regarding consolidation and restructuring of counties

likely will not be resolved for years, the commission covered much ground during the interim. He said further study will be needed in the future to address problems faced by counties in providing services in an efficient manner.

It was moved by Citizen Member Sorensen, seconded by Senator Klein, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill draft recommended by the commission and to present the report and recommended bill draft to the Legislative Council.

It was moved by Citizen Member Sorensen, seconded by Senator Klein, and carried that the meeting be adjourned sine die.

John D. Bjornson
Counsel

ATTACH:1