

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIARY COMMITTEE

Tuesday, August 24, 1999
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Wayne Stenehjem, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Wayne Stenehjem, Dennis Bercier, Joel C. Heitkamp, Judy Lee, Stanley W. Lyson, Carolyn Nelson, John T. Traynor, Darlene Watne; Representatives Duane DeKrey, Lois Delmore, G. Jane Gunter, Scot Kelsh, Lawrence R. Klemin, Kim Koppelman, Shirley Meyer, Phillip Mueller

Members absent: Representatives Kathy Hawken, Dennis E. Johnson, Amy N. Kliniske, John Mahoney

Others present: See attached appendix

Chairman Stenehjem announced he had appointed Representative Duane DeKrey to serve as vice chairman of the committee.

At the request of Chairman Stenehjem, John Olsrud, Director, Legislative Council, reviewed the Legislative Council's supplementary rules of operation and procedure.

VOTER REGISTRATION STUDY

At the request of Chairman Stenehjem, committee counsel presented a memorandum entitled *Voter Registration - Background Memorandum*.

Chairman Stenehjem called on Mr. Alvin Jaeger, Secretary of State, for testimony concerning the voter registration study. Mr. Jaeger said North Dakota is the only state in the nation without some form of voter registration and because of that, North Dakota is also one of six states that is exempt from complying with the National Voter Registration Act of 1993 (NVRA). He said if North Dakota enacts voter registration, it would be required to comply with the provisions of the NVRA and the study should address how the provisions of NVRA would impact North Dakota, both from a procedural and fiscal standpoint. He said the study should also address whether voter fraud exists in North Dakota without voter registration and whether voter fraud would be alleviated by enacting voter registration. He also said there are issues pertaining to the state's voter residency laws that the committee may want to consider as a part of its voter registration study. He said with or without voter registration, North Dakota's voter residency laws will continue to create challenges in determining voter and officer eligibility unless they are addressed. Mr. Jaeger submitted

written testimony, a copy of which is on file in the Legislative Council office. Mr. Jaeger also distributed copies of letters and testimony regarding voter registration and residency issues, copies of which are on file in the Legislative Council office.

In response to a question from Senator Nelson, Mr. Jaeger said Medora is the only city that uses the provisions of North Dakota Century Code (NDCC) Section 40-21-10 to require voter registration for municipal elections.

In response to a question from Representative Delmore, Mr. Jaeger said he is not aware of any cases of voter fraud which have been brought to the attention of a state's attorney. He said there are more concerns over whether people are voting in the proper precinct than over voter fraud.

In response to a question from Senator Stenehjem, Mr. Jaeger said he conducts regular meetings with county auditors regarding election procedures.

In response to a question from Representative Koppelman, Mr. Jaeger said Minnesota is not subject to the NVRA because the state was "grandfathered in" under the 1993 law, but it has been made clear to him that if North Dakota would institute voter registration, it would be subject to the law. Regarding voter residency requirements, he said, the law is unclear as to where people should vote, especially for students and people in nursing homes.

In response to a question from Representative Klemin, Chairman Stenehjem said the penalty for voter fraud is a Class A misdemeanor under NDCC Section 16.1-01-12 and the penalty for destroying ballots is a Class C felony.

In response to a question from Senator Traynor, Mr. Jaeger said implementing voter registration would be costly for both state and local governments.

In response to a question from Senator Stenehjem, Mr. Jaeger said if voter registration is implemented, a centralized data base would be necessary.

In response to a question from Senator Watne, Mr. Jaeger said a number of problems have arisen under the federal law which have resulted in numerous lawsuits in other states.

In response to a question from Representative Mueller, Mr. Jaeger said issues of voter residency are

closely tied to those of voter registration and that voter residency issues will need to be clarified if voter registration is implemented.

In response to a question from Representative Klemin, Mr. Jaeger said voter lists, which are contained in poll books, are public records. He said some states register voters based on political party affiliation. He said the purpose of voter registration should be for voting purposes, not to reveal a person's political party preference.

In response to a question from Senator Heitkamp, Mr. Jaeger said addressing concerns over persons voting in the proper precinct would go a long way resolving any problems of voter fraud which may be occurring.

Chairman Stenehjem called on Mr. Terry Traynor, North Dakota Association of Counties, for comments concerning the voter registration study. Mr. Traynor said the Association of Counties will be available to offer assistance to the committee as it studies the voter registration issues. He said the implementation of voter registration would impact many county offices.

In response to a question from Senator Stenehjem, Mr. Traynor said the Association of Counties position on the failed 1999 legislation to implement voter registration was one of concern and that the issue needed a more thorough study. He said because many counties use the same election software, it should be fairly easy to cross-check poll books to identify voter fraud.

In response to a question from Representative Klemin, Mr. Corey Fong, Elections Officer, Secretary of State's office, said there is not a law that requires poll workers to ask for identification linking that person to a specific precinct. He said the law only allows that a person may be asked to sign an affidavit stating the person is voting in the correct precinct. He said because of the limits on what a Social Security number can be used for, the number cannot be used as an identifier for election purposes. However, he said, a unique identifier number could be used.

In response to a question from Senator Traynor, Mr. Fong said precincts that are located on Indian reservations follow state election laws, but those laws do not apply to tribal elections.

Chairman Stenehjem announced that the consensus was that the study approach outlined in the background memorandum be adopted. Representative Koppelman said the study should be expanded to include a study of voter residency requirements. Chairman Stenehjem asked if that was the consensus. Members of the committee agreed that the study should be expanded. Chairman Stenehjem said he would communicate that request to the chairman of the Legislative Council.

Chairman Stenehjem requested that the Secretary of State gather information on the residency requirements of other states and present the information to

the committee at a future meeting. He also requested that the committee be provided with information on North Dakota case law regarding voter residency.

COURT UNIFICATION AND CLERK OF DISTRICT COURT STUDY

At the request of Chairman Stenehjem, committee counsel presented a memorandum entitled *Court Unification Study - State Funding of the Clerk of District Court Office - Background Memorandum*.

Chairman Stenehjem called on Chief Justice Gerald W. VandeWalle, North Dakota Supreme Court, for testimony concerning the court unification and clerk of district court study. Regarding the implementation of the clerk of district court legislation passed during the 1999 legislative session, Chief Justice VandeWalle said \$1 million was appropriated for the last three months of the biennium. He said that amount may not be enough and the entire amount may be consumed by wages alone. He said, however, that the amount is based on the prospect that all counties will choose the option of state funding its clerk of district court operations. He said counties have until April 1, 2000, to make that decision. He said the Supreme Court has prepared an internal operating plan for the transition of clerks from county employees to state employees. As part of the operating plan, he said a periodic newsletter, the first of which should be ready by September 1, 1999, will be distributed to clerks of court and county commissioners to keep those persons apprised of the progress on the implementation. He also said each member of the Supreme Court's administrative staff has assignments regarding the implementation. He said persons from his staff will be available to speak to the counties to discuss proposals. He said the Supreme Court is keeping the counties involved as staffing standards, statistics, and classifications are developed.

In response to a question from Senator Lyson, Chief Justice VandeWalle said many of the questions and concerns counties are having will be addressed in the newsletters. He said while there is a real fear among the counties about what might happen, the court needs time to finalize details. He said all members of the committee will be sent a copy of the court's plan as well as the newsletter.

In response to a question from Senator Watne, Chief Justice VandeWalle said although no counties have officially selected the state funding option, it is expected that the larger counties will select that option before the April 1, 2000, deadline.

In response to a question from Senator Traynor, Chief Justice VandeWalle said, to date, the reduction in district court judgeships has been made by either the resignation or the death of a judge. He said, however, to make the final reduction to 42 by January 1, 2001, a sitting judgeship must be eliminated. He said the person whose position is to be

eliminated must be notified by January 1, 2000, and the position to be eliminated must be one that would be up for election in 2000. He said there are 11 positions up for election in 2000 and all will be considered for elimination except for one position in the Southeast Judicial District.

In response to a question from Senator Heitkamp, Chief Justice VandeWalle said the district judges use a rotation system to provide judicial services in rural areas. He said the reduction in judgeships has resulted in fewer judges actually living in the rural areas and that few judges are a part of the "fabric" of the community.

In response to a question from Senator Stenehjem, Chief Justice VandeWalle said docket currency standards are being met.

In response to a question from Representative Meyer, Chief Justice VandeWalle said the complaints that cases take too long is not always the judge's fault. He said judges rely on the attorneys to determine how much time to set aside for each case. He said the court needs to be made aware of problems in the rural areas. He said to increase the number of judges, the Legislative Assembly will want to see documentation of the problems and the need for an increase.

Chairman Stenehjem said the committee should hear from persons in rural areas about scheduling problems and access to the courts.

Chairman Stenehjem said the clerk of court and court unification study is one of monitoring and recommending any changes that may need to be made as the implementation proceeds. He said because the effective date of the clerk of district court legislation is April 1, 2001, legislation to correct any implementation problems could be accomplished by the 57th Legislative Assembly through the use of an emergency clause.

FAMILY LAW STUDY

At the request of Chairman Stenehjem, committee counsel presented a memorandum entitled *Family Law Process - Background Memorandum*.

Chairman Stenehjem called on Ms. Sandra Tabor, Executive Director, State Bar Association of North Dakota, for comments concerning the study. Ms. Tabor said to relieve some of the caseload pressure from the state's courts, mediation and other forms of alternative dispute resolution should be used more. She said there are national organizations the committee could contact as resources during the course of the study. She said it is imperative that work continue in the area of mediation, especially in divorce cases. She said the qualifications of mediators is an issue to be addressed and the committee could look to what other states are doing. She also said the committee could review statutes and recommend the codification of court rulings, the elimination of repetition among the statutes, and the updating of

antiquated language. She said the Bar Association's Family Law Task Force used Minnesota law as a model when it conducted a review of family law statutes.

In response to a question from Senator Traynor, Ms. Tabor said domestic violence is a problem that is difficult to predict and it raises issues of court security.

Chairman Stenehjem said the committee should consider conducting joint meetings with the Family Law Task Force and that there may be a need to form subcommittees. He said the committee will not be addressing child support issues or statutes because the issues would be too time-consuming and the issues were studied in the last interim.

Chairman Stenehjem called on Mr. John Emter, Bismarck, for comments concerning the study. Mr. Emter said he is involved in a domestic dispute and has received little help from state agencies. He said legal representation is difficult to obtain if a person cannot afford an attorney and the forms he has been required to complete are difficult to understand. He said the system forces people to give in.

UNIFORM LAWS

Chairman Stenehjem called on Mr. Jay E. Buringrud, Secretary, North Dakota Commission on Uniform State Laws, for comments regarding the enactment of uniform laws. Mr. Buringrud said the North Dakota Commission on Uniform State Laws was established by NDCC Section 54-55-01. He said the commission consists of:

- A practicing lawyer (Mr. David Hogue).
- A full-time faculty member of the University of North Dakota School of Law (Professor Patricia Brumfield Fry).
- A law-trained judge of a court of record (District Judge Gail Hagerty).
- A member of the House (Former Representative William E. Kretschmar). Former Representative Kretschmar's term will continue until October 1. The Legislative Council has appointed Representative Lawrence Klemin to the commission.
- A member of the Senate (Senator Wayne Stenehjem).
- A member of the Legislative Council staff (Mr. Buringrud).
- Life members of the conference (Judge Eugene Burdick, Mr. Frank Jestrab).
- Residents with five years' prior experience (Mr. Mike Unhjem, Professor Owen Anderson).

Mr. Buringrud said commissioners are required to attend the annual meeting of the National Conference of Commissioners on Uniform State Laws. The major duties, he said, are to promote uniformity in state laws on those subjects on which uniformity may be deemed desirable and practicable and to promote uniform judicial application and construction of all

uniform state laws. He said the commission may submit recommendations for enactment of uniform and model laws to the Legislative Council.

Mr. Buringrud said the commission recommends four uniform Acts to the Judiciary Committee for its review and recommendation:

- The Uniform Commercial Code Revised Article 9 - Secured Transactions (1998), including amendments to date. This Article supersedes the current Article 9, adopted in North Dakota as NDCC Chapter 41-09 in 1965.
- The Uniform Electronic Transactions Act. This Act recognizes transactions between parties each of which has agreed to conduct transactions by electronic means. It recognizes electronic records, electronic signatures, and electronic contracts.
- The Uniform Disclaimer of Property Interests Act (1999). This Act consolidates various uniform Acts on disclaimer of property interests.
- The Uniform Foreign Money Judgments Recognition Act. This Act has been adopted in 31 states, including Minnesota, Montana, Idaho, and Washington. It provides that a judgment entitled to recognition will be enforceable in the same manner as the judgment of a court of a sister state which is entitled to full faith and credit.

In response to a question from Senator Bercier, Mr. Buringrud said the national conference is looking

at the idea of including optional tribal language in the uniform Acts.

Chairman Stenehjem said uniform laws provide for uniformity of statutes among states and are enacted to ensure that Congress does not pass laws that may preempt states' rights in that subject area.

OTHER BUSINESS

Chairman Stenehjem said any member of the committee may request bill drafts at any point during the interim. He said the next meeting, which will be a joint meeting with the members of the Family Law Task Force, is scheduled for September 27.

Chairman Stenehjem adjourned the meeting at 12:10 p.m.

Vonette J. Richter
Counsel

John D. Olsrud
Director

ATTACH:1