

2009 HOUSE POLITICAL SUBDIVISIONS

HB 1293

# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. HB 1293

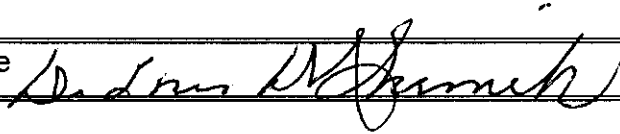
### House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8760

Committee Clerk Signature



Minutes:

**Chairman Wrangham** opened the hearing on HB 1293.

**Rep. Dosch:** Presented the bill. (see testimony #1). Went into detail about the Parks and Recreation leasing the new aquatic center and how they went around the wishes of the people.

**Rep. Jerry Kelsh:** You mentioned that they went through voters and did not get the 1% sales tax approved and then went around everything to do it anyway. Where then do they get the money to pay those leases?

Rep. Dosch: The numbers I recall with the Park Board was going to kick in \$300,000 in Bismarck, even though they are so far in debt I don't know how they are going to do that. They are relying on two of the high schools in Bismarck to lease the facility for their swim teams. Both of these teams are currently utilizing the YMCA. This group thinks they are going to get more money from the high school to go over to their new facility. The bottom line is they are relying on that income to help pay for the lease. In addition, they are relying on BSC fees and again you are going to have another group of kids in there. That is another questionable source of funds. We would also have an exercise facility in here; they are anticipating fees from that, which would be in direct competition with other facilities.

**Rep. Conrad:** What you are having difficulty with this bill the Park Board should have had a bid on the project.

**Rep. Dosch:** That is correct. I think it is going to be a great addition to Bismarck. The issue is how the private financially was put together and justified. I am a tax payer and I know that Parks and Recreation are up to their eye balls in debt and now they take on this project from questionable income sources. We really have no way of knowing the real amount of the facility yet since there was no bidding?

**Rep. Conrad:** You probably would end of with the same project with the same company?

**Rep. Dosch:** But because the amount that it will cost to rent that facility since the cost of the project will be at least 29 mills or something like that. What amount of a building are we getting? We are being told what the actual cost of this building is. If I am the only bidder on the project then we don't know.

**Rep. Conrad:** So if I am on the Park Board and I put out a request for this project and only one company comes forward to do that that would be OK?

**Rep. Dosch:** If one person came forward. What they did they go out with a request for information? They did not request a bid. They did not even give specifications for the project. They got one request back and that is my concern.

**Rep. Zaiser:** Did they come up with a figure?

**Rep. Dosch:** they did come up with an \$8.7 million figure, but how do you verify that? They made out a contract to the group to build it. What are we getting?

**Rep. Zaiser:** Has the Attorney General seen your bill?

**Rep. Dosch:** The attorney general working with Legislative Council in drafting this so we could stop this from happening again.

**Lynn Bergman: Taxpayer:** (see testimony #2) regarding the swimming pool; I have personal knowledge from one of the bidders on the project that he was not asked for a bid; he was asked for his estimate for the most it would cost for the project. Went over his testimony. It was not bid out and none of the normal procedures were followed.

**Rep. Koppelman:** I am trying to see how the bill will accomplish what we want and I am at a loss.

**Lynn Bergman:** It simply eliminates some wordage that allows local entities to discourage bidding.

**Bill Klock: National Contractors Assoc. :** Just in support of the bill. Everyone should have a change to bid on a project.

**Chairman Wrangham:** Were you aware of this project the Rep. Dosch referred to here in Bismarck?

**Bill Klock:** Yes

**Chairman Wrangham:** did members submitted bids or proposals for that?

**Bill Klock:** I do know that a member of the mechanical association got the work on the project in Bismarck.

**Michael O'Brian: Bismarck Businessman:** I am a new commissioner on the Park Board in Bismarck. I just wanted to answer some of the things that Rep. Dosch mentioned. The front page report eluded to an operating report for the pool and showed a 90% return. I think that is very unlikely if we receive 50%. The exercise portion of the \$8.5 million that is going to be paid for by the citizens in general. I assume they will come back to the Park Board for extra funds. Discussed the way they went about this and how wrong it was to go around voters and cost them a lot more money.

**Rep. Conrad:** Will this bill help the situation?

**Michael O'Brien:** This bill will not help our situation in Bismarck. This is something we will have to deal with ourselves. The point is the tax payers will be stuck with this. Steamline is a private nonprofit group that is going to build us this pool. We are going to pay this back over 25 years and after that Streamline is going to continue to own the swimming pool. Whatever we pay in lease payments will then be reduced. Whatever that reduction is if there is a profit for Streamline; they are suppose to take that money and reinvest into other projects.

**Rep. Jerry Kelsh:** If the original contract was for 25 years and then Bismarck would own it; if that is true, would the Park Board vote on that after the change is made.

**Michael O'Brien:** It originally started out being a 20 year contract; they decided they were going to go to a 25 year contract and they would retain ownership. Up until that point the citizens of Bismarck were lead to believe that after 20 years they were going to own a swimming pool. Somehow they got that changed. There was discussion by the previous board of 3 people to change that.

**Rep. Koppelman:** All this bill would do it provide for competitive bidding for contracts.

**Michael O'Brien:** that is correct. The point is are we getting an \$8.5 million pool? We are getting nothing from Streamline. We have no control over the construction or running of the pool because we do not own it. We want to make for sure the citizens at least get a fair price for their product.

**Rep. Koppelman:** They are going to rent it indefinitely and never will own it so the only questions is how much it will cost because the tax payers will end of paying.

**Michael O'Brien:** If it costs us \$6 million; our monthly payments will be based on the cost of the pool; so if the pool is \$2-\$3 million more than they should have been if it would have been bid out; that means the tax payers are paying that much more.

**Rep. Kretschmar:** did the city enter into an agreement?

**Michael O'Brien:** We have entered into a lease from Streamline; which they are a nonprofit organization. But we don't know what our monthly payments are because we don't know what the pool is going to cost us.

**Rep. Zaiser:** The Park Board will pay for all the operating expenses.

**Michael O'Brien:** That is correct.

**Rep. Hatlestad:** If a private firm built the building they don't have to have a request for bids?

**Michael O'Brien:** that is correct. The only thing is we used tax payers dollars for the lease.

**Rep. Hatlestad:** There is no request necessary for proposals?

**Michael O'Brien:** It is being built right now and there is nothing we can do. We are just asking you in the future if we are spending tax payer's dollars that we at least know what the cost is going into the project. We only know they cannot exceed \$8.5 million.

**Rep. Hatlestad:** You are saying that now anytime any one is going to lease to a public entity they are going to put it up for bidding.

**Michael O'Brien:** I don't know if it is a bad deal? I think the citizens need to know.

**Rep. Koppelman:** Was the contractor selected and then the lease was signed?

**Michael O'Brien:** Yes

**Rep. Koppelman:** If a private entity wants to build a structure they can do it.

**Michael O'Brien:** If we are asking the tax payers to pay for this they should be informed or significant changes.

No Opposition

Neutral:

**Connie Sprynczynatky:** There are lots of private nonprofit organizations across ND.

Whatever you do in state law here is for everyone. Park Districts in a lot of the communities have partnerships with private owned non profits. In the case of indoor swimming; I am not

sure if there are competitors? Private public partnerships all over the state might question how does this bill impact their ability? Building projects don't require all public votes for all political subdivisions. Removing the opportunity to enter into a private public partnership means someone else is going to build the facility. Bids were done on the civic center. After this bill you can end up with the same situation. You can get one bid so I am not sure whether you would be getting what you want.

**Chairman Wrangham:** I cannot think of an instance when bidding would not be a good practice? Can you help me with this?

**Connie Sprynczynatky:** You can have a local policy that says all public expenditures have to go to a bidding process. So you can have a process that can be more restrictive than that. Someone has to write the bidding process clearly so that it is done right and you get the right bid back.

**Rep. Koppelman:** Is there a threshold in law now that most cities use now for dollars?

**Connie Sprynczynatky:** We have a policy in the city as to a \$5000 amount.

**Rep. Klemin:** We are talking about situations where public entity like Bismarck Civic Center is contracted for the management of the facility. Let's say the city wanted to have a project manager do all the managing for them; the way it is now the city of Bismarck can decide whether or not they want to get rid of some manager. If this bill passes they would have to submit this to the manager?

**Connie Sprynczynatky:** right now for public improvements we know we have to go through competitive bidding process. With regard to professional crews we do not go out on a bid project. We go out as a team and decide on various contracts.

**Rep. Klemin:** The way I read this bill it is going to take away the choice for competitive bidding.

**Connie Sprynczynatky:** That is another confusion that we have' if that is the case.

**Chairman Wrangham:** Does the Park Board have a threshold like the city of \$5000?

**Connie Sprynczynatky:** I don't know of any reason in state law why a Park District could not adopt its own policy to implement regarding this bidding.

**Rep. Klemin:** In this particular case the Park Board opted not to adopt this rule. So there weren't enough votes to take it to the citizens.

**Connie Sprynczynatky:** What happened with the sales tax vote the Park District came to the city and asked for an additional ½ cent for a number of projects and we said; first you better have a public hearing and if it looks like it was workable, put it on the ballot. I can tell you there was a public hearing that day and there were a lot of people saying they liked the idea of the pool.

**Rep. Koppelman:** If the advice from the City Commissioner to the Park Board was we will put it on the ballot, but you live with the decision; what is the authority for the money that is going to be spent on these lease payments?

**Connie Sprynczynatky:** In order to levy any additional money there has to be an election. I assume it is coming out of the operating budget. Funding now comes from user fees for the major portion of the use.

Hearing closed.



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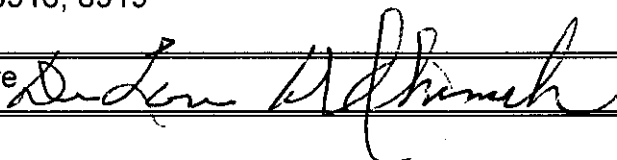
### House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 6, 2009

Recorder Job Number: 8916, 8919

Committee Clerk Signature



Minutes:

**Chairman Wrangham** reopened the hearing on HB 1293.

**Rep. Conrad:** I don't see how private entities were not required to bid on them. They did not re elect those people to the Park Board.

**Rep. Headland:** the tax payers are the ones that lost here. They are the ones footing the bill.

**Rep. Klemin:** Not exactly because it is a fee based facility. I think the remedy is elect someone else if you don't like what they are doing.

**Chairman Wrangham:** Decided to hold it.

Hearing closed.

Job #8919

**Chairman Wrangham** reopened the hearing on HB 1293. Discussed a proposed amendment being the construction projects would not be exempt?

**Rep. Conrad:** If we do it it will affect the whole state.

**Rep. Zaiser:** State law does not require private organizations to get public bids so the only way you could not list them is to stop the Park Board from contracting to a non profit?

**Chairman Wrangham:** I don't think the intent would be to stop a non profit from building. We don't want to do that. I want to talk to the bill sponsor's first.

Hearing closed.

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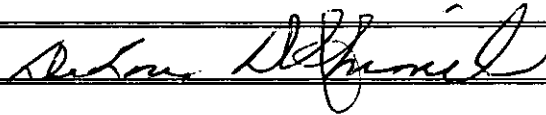
### House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 12, 2009

Recorder Job Number: 9418

Committee Clerk Signature



Minutes:

**Chairman Wrangham** reopened the hearing on HB 1293.

**Do Pass Motion Made By Rep. Conrad: Seconded By Rep. Headland**

**Discussion:**

**Rep. Koppelman:** I wanted to discuss the amendment.

**Rep. Zaiser:** I am sympatric for the situation of the Bismarck Park Board. We cannot make a private organization do public bidding.

**Chairman Wrangham:** What is Chapter 48-02.1-12 what is that? This deals only with projects paid for with public funds.

**Rep. Nancy Johnson:** I don't support this bill. I think the Park District was ill advised when they made their decisions. I think someone should have gotten involved; either a city attorney or someone. I think when you sign a contract or lease without an attorney is not good.

**Rep. Koppelman:** I am not sure if the bill accomplishes what the sponsor is trying to do. I was wondering if; the issue seems to be the last over struck language on page 2 which says it so determined by resolution by governing of the public authority because I think what they were getting at was that right now current allows talks about competitive bidding, but it leaves the decision of whether competitive is done in the hands of that local political subdivision so by

striking this whole subsection are we eliminating competitive bidding or is that somewhere else in law? I am not sure. Except in public private partnerships there are often times regulations that go with that that are imposed on the private entity because it is an open meeting; open records come in. All kinds of provision of law come into these public private arrangements. If the other bill passes it does require a vote of the people.

**Rep. Klemin:** Focusing only on Section 2 what if the bill only deleted the last clause. Maybe we should leave that language in?

**Rep. Koppelman:** If you remove the overstrikes on Subsection 2; bottom of page 1 and the top of page 2 except for; leave the overstrike and put a period after ordinances and leave the overstrike on the words if so determined by resolution of the governing body of the public authority.

**Chairman Wrangham:** What about the new language on 11 & 12?

A lot of discussion on the language and what it means.

**Rep. Koppelman:** On line 20 that we were just talking about; aren't we trying to get at contractor leadership?

**Rep. Conrad withdrew her motion; Seconded By Rep. Headland was withdrawn too.**

Hearing closed.

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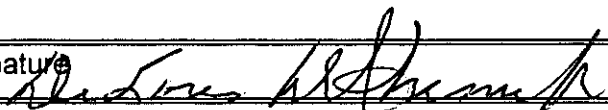
### House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 16, 2009

Recorder Job Number: 9593

Committee Clerk Signature



Minutes:

**Chairman Wrangham** reopened the hearing on HB 1293.

This is the bill attempting to require the bidding process when public buildings are constructed by nonprofit corporations.

**Chairman Wrangham:** It would only be with MIDA bonds. They are public bonds aren't they? They are guaranteed too.

**Rep. Klemin:** I don't think the deletion of the last part of this bill is very constructive. There are no boundaries here so if you wanted to put a coin operated washing machine you would have to get a bid on it.

**Chairman Wrangham:** The purpose of the coin operated washing machine was funded through a third party. It would have to be a nonprofit corporation for that to apply?

**Rep. Klemin:** You are correct.

**Do Not Pass Motion Made By Rep. Klemin: Seconded By Rep. Zaiser**

**Vote 11 Yes 2 No 0 Absent Carrier: Rep. Klemin**

**Hearing closed.**

Date: 2/12  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1293

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS DO NOT PASS AS AMENDED

Motion Made By Rep. Conrad Seconded By Rep. C Headland

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman			Rep. Kari Conrad		
Rep. Craig Headland, Vice Chairman			Rep. Jerry Kelsh		
Rep. Patrick Hatlestad			Rep. Robert Kilichowski		
Rep. Nancy Johnson			Rep. Corey Mock		
Rep. Lawrence Klemin			Rep. Steve Zaiser		
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Vonnie Pietsch					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Carrier: \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Withdrawn  
2/12*

Date: 2/16  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1293

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS DO NOT PASS AS AMENDED

Motion Made By Rep. Klemin Seconded By Rep. Zain

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman		✓	Rep. Karl Conrad	✓	
Rep. Craig Headland, Vice Chairman		✓	Rep. Jerry Kelsh	✓	
Rep. Patrick Hatlestad	✓		Rep. Robert Kilichowski	✓	
Rep. Nancy Johnson	✓		Rep. Corey Mock	✓	
Rep. Lawrence Klemin	✓		Rep. Steve Zaiser	✓	
Rep. Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Vonnie Pietsch	✓				

Total (Yes) 12 No 2

Absent 0

Carrier: Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1293: Political Subdivisions Committee (Rep. Wrangham, Chairman) recommends DO NOT PASS (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1293 was placed on the Eleventh order on the calendar.**



2009 TESTIMONY

HB 1293

#)

## HB 1293

Political Subdivisions

D. Wrangham, Chairman

February 5, 2009

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Chairman Wrangham, and members of the Political Subdivisions Committee, for the record my name is Representative Mark Dosch, representing the 32<sup>nd</sup> District.

I am here today to ask your support for HB 1293 which deals with competitive bidding requirements.

To understand why this legislation is needed, let me share with you my story.

Several years ago, the voters of Bismarck were asked to approve a 1% city sales tax increase. The purpose of this increase was to fund various projects put forth by our Parks and Rec. department. One of the many projects included a new aquatics center for Bismarck. The voters of Bismarck by a resounding 2 thirds majority said no to the sales tax increase. This you would think would have been the end of this matter, but it was only the beginning.

Our Parks and Rec department, determined to build the aquatics center despite the wishes of the taxpayers proceeded on to determine a way to build it anyway. A local group of investors called the stream line offered to build the facility and lease it back to the Parks and Rec. At the end of the term, it would be owned by the P&R. Thus they would get the facility they wanted, and would not have to show the debt on their books. In addition, since the facility would not be owned by the parks and rec. they could skirt the competitive bidding requirement as well. And the best part, this could be approved by just 3 of the 5 park board members. Three people could actually approve a project that the taxpayers said no to, and that is exactly what they did.

An attorney general's opinion was requested, to answer the question if a project could be built without putting out a RFP and the competitive bidding requirement. Unfortunately the Attorney General confirmed that since the project was not owned by the parks and rec. the project was not subject to the completive bidding requirement.

The parks and rec then voted to approve the lease with stream line, even though the amount of the lease was left blank, because it was said that the exact amount of the project and financing was not yet finalized yet. Can you imagine voting to approve a lease agreement without knowing the lease amount? Unbelievable isn't.

In addition, the ownership of the project, which originally going to revert to the P &R after the 25 year lease period was also changed. Stream line decided to now retain ownership of the aquatics center. The taxpayers will pay for all the costs, including the debt service and operating expenses for the next 25 years yet own nothing.

In conclusion, 3 people on our park board, none of whom had any bank or finance background agreed to obligate the citizen of Bismarck to paying for a \$9 million project that was originally voted down by our citizens. The questions for all of us are what exactly the cost of the project is. Are we getting a 9 million dollar aquatics center or will it be a \$6 million project that we are paying 9 million for? We simply don't know, because the project was never put out for bids, no RFP or any specifications for the project, no one know except the 3 park board members and the stream line folks really know, yet it will be the tax payers who will pay for in the end.

To put things into perspective, if this was a state agency, any project over \$25,000 requires a Request for Proposal (RFP). Here, the Park Board committed to a \$9 Million project with no RFP

In addition, you would think a project this size would have a well thought out operating and project profit and loss statement prepared by a qualified CPA firm to determine the validity of the project, but once again, this was not done. The feasibility study and validity of the project was put together by a staff member of the parks and rec. A single page statement to justify a \$9 Million dollar project.

This unbelievable series of events will no doubt turn into the biggest fleecing of the taxpayers of Bismarck. What other project have you heard of this size, either public or private, built without the stakeholders consent, built without a feasibility study, without a formal budget, and without placing the project out for competitive bids? It is simply unheard of. There is not a single business in this state that would operate in the manner the Parks and Rec has.

The bill before you, although can't change the outcome of the Bismarck project, will help prevent this type of taxpayer abuse in the future. We can't legislate against bad park board decisions, but by removing the exemption, it would have forced this project to be placed out for competitive bid, the citizens of Bismarck would at least know if the public is getting a fair deal or getting fleeced.

Members of the committee, I ask your support and favorable support of this taxpayer protection legislation

Thank you. I will be open for any questions.

**Testimony of Lynn Bergman, taxpayer on HB 1293, SB2270, & SB 2401**

***Municipal Industrial Development Act (MIDA) revenue bonds***

In 1990, \$2.75 million in MIDA bonds issued for the purchase and redevelopment of the Black Building at 118 Broadway in Fargo were declared in default, prompting an investigation by North Dakota's securities commissioner. Bondholders said they thought the investment was solid because the city lent its name to the bonds.

***The "Ralph" and the "Betty"***

The Ralph Engelstad Arena and Betty Engelstad Sioux Center in Grand Forks (Opened in October 2001 and August 2004) were designed by Icon Architectural Group and constructed with \$111+ Million in private donations.

***The "UP Center"***

Phase I of Fargo's Urban Plains Center and Tournament Facility (Opened in fall 2008), also designed by Icon Architectural Group, was constructed by the non-profit Metro Sports Foundation with \$25 Million borrowed from local banks at 7% interest.

Groundbreaking for the UP Center was held on June 27, 2007. A local bank committed \$2 Million in financing to the project in August 2007. The MSF receives tax-exempt status from the IRS in December 2007. Complete financing was not in place until April, 2008, 10 months after groundbreaking and only 6 months prior to its first event on October 30<sup>th</sup>, 2008. University of North Dakota hockey coach Dean Blais was hired by the MSF for a reported five year contract at \$1 Million.

Fundraising began in October 2008 for Phase II of the UP Center with hopes that construction on the \$12 million project can begin in late 2009. The Metro Sports Foundation, hired Fargo fundraising firm GivingPoint to seek private funding for the arena's second construction phase. Phase II, the project's "tournament" facility, will be four ice sheets totaling 130,000 square feet to be utilized by youth hockey in the Fargo area. Phase II construction will begin when \$6 million in private donations are secured.

***Developer Ace Brandt***

Fargo area developer Ace Brandt announced plans to build a \$34 Million hockey arena in southwest Fargo on March 22, 2007 on 15 acres just north of 32nd Avenue South at about 51st Street in Urban Plains by Brandt, a 328-acre development. The main users of the UP Center are be Fargo youth hockey, Fargo Public Schools, Fargo Shanley hockey, and the Fargo Force USHL junior hockey team. Brandt owns the USHL franchise, having

paid a \$750,000 USHL membership fee and expects to have a \$1 million operating budget, which is the average for USHL teams. The 15-acre plot of land for the facility will be donated by Brandt.

### ***The UP Center / Ralph Connection***

The compressor that regulates the UP Center's single ice sheet is larger than the compressor that runs two sheets of ice at the Ralph Engelstad Arena, said General Manager Lance Johnson, the former Director of Event Services at the Ralph. Todd Berning, Metro Sports Foundation President, was formerly the General Manager of the Ralph Engelstad Arena. Sommer Lockhart, Marketing Director for the UP Center, held the position of Marketing Manager during her last three years at the Ralph. Johnson, Berning, and Lockhart likely received significant salary increases to leave the Ralph for the UP Center.

### ***My Questions:***

1. How long will Ace Brandt's "Fargo Force" USHL franchise remain in Fargo?
2. Who will repay the loans for \$25 Million facility if Ace Brandt's franchise fails?
3. Why wouldn't the banks seek repayment of the loans by Fargo Public Schools (deepest pockets), the Fargo Park District, and private Fargo Shanley High School in the event of the demise of the Fargo Force franchise?
4. Why is the Metro Sports Foundation paying the USHL coach's salary? Did Ace Brandt actually pay the \$750,000 franchise fee or did MSF pay it for him?
5. How much extra did the design and construction management of the facility cost because the architectural and engineering services were not publicly bid? *solicited*
6. How much extra did the facility cost to construct because the construction was not publicly bid?
7. How much more will the facility cost to operate because of the salaries of its staff recruited away from the Ralph Engelstad Arena?
8. How much more interest will be paid over the term of the loan(s) because the project was started before all financing was in place?
9. Why was the Bank of North Dakota interested in funding the project?
10. Why did the state allow the mechanisms of the DONATED Ralph Engelstad Arena to be used for a BANK FINANCED quasi-public non-profit project?

### ***Summary:***

I urge the enactment of legislation that will eliminate the possibility of the public entities becoming involved in any further projects such as the UP Center. And I pray for the success of Ace Brandt's "Fargo Force" hockey team for the sake of all those public servants that were and are participants in a venture that is tenuous at best. Government should not become involved in the risky business of amateur sports franchises or any other risky ventures.