

2009 HOUSE JUDICIARY

HB 1347

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1347

House Judiciary Committee

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Hearing Date: 1/26/09

Recorder Job Number: 7713

Committee Clerk Signature *D. Penrose*

Minutes:

**Chairman DeKrey:** We will open the hearing on HB 1347.

**Rep. Kim Koppelman:** Sponsor, support, explained the bill. This bill sets out to correct what can only be an oversight in existing law. We have a long-standing tradition in ND of taxpayer dollars being off-limits when it comes to campaigning. That is true, certainly, when it comes to advocating for or against a candidate in an election. However, there is a further law in this section, and that is that it doesn't say anything about initiatives, referred measures, or constitutional measures. I find it strange that we didn't have in law a provision that also prohibited taxpayer dollars being used to advocate for or against a particular measure on the ballot, just as it currently prohibits the use of taxpayer funds in other election matters. That is what the bill does; prohibits the use of taxpayer funds to advocate for any political matter or person. Rep. Ruby had a bill almost identical to this. We only need one bill to take care of this; his bill will be withdrawn with a minor change to my bill. The wording in each bill was identical up to a point; and Rep. Ruby will be bringing an amendment to cover his concerns.

**Rep. Delmore:** First, what do we consider as far as what is "public money" in that way and can you think of an instance? Is this based on something that we've seen happen in the state where there was an involvement of money that shouldn't have been spent on a measure?

**Rep. Koppelman:** An answer to the first question, is that I'm not sure what all the definitions mean because this doesn't create new ones, it just adds a type of election to what are already prohibited. So whatever is prohibited for candidates is prohibited for measures as well. There was a measure on the ballot this last election having to do with WSI. It was a hotly contested issue and a lot of people were interested in it. Under our current law, the Dept., as I understand it, could have spent its money to advocate for an issue. We don't want to see that happen.

**Chairman DeKrey:** Thank you. Further testimony in support of HB 1347.

**Lynn Bergman, Retired Civil Engineer:** (Attachment re: "prohibited conduct") Throughout my career, every once in a while I would get an e-mail that was being passed around the company that asked everyone in the company to vote for a bill; when that happened I went to senior management to stop that from happening (this was in the private sector). In the public sector, both in AZ and CO, there are strict rules as to what a public employee can do. I was purposefully told that I could not use company resources to influence other people in business or political matters. In the attachment, it is requested that we add a subsection 4 regarding Employees in the Central Personnel System... (read #4). Right behind the first page is an example that Rep. Delmore asked for; a professor at NDSU, and other examples are included on the second page of my handout.

**Rep. Delmore:** Most of the penalties, as I understand it, are class B misdemeanors. So if someone sends out an email, perhaps even after hours, but still on a state computer, is that the intent that you would charge them with a class B misdemeanors.

**Lynn Bergman:** If it were up to me, I would terminate them immediately.

**Rep. Klemin:** I'm not exactly sure what it is that you're proposing to put in this bill. You have given us two pages, one of a statute and other examples.

**Lynn Bergman:** I want us to focus on the red typing of #4; the added paragraph to the personnel code.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Robert Harms, Bismarck resident:** Support (attachment). I think it is wrong for public employees to use state or local resources to advocate for or against a measure, etc. whether it is through mail, email, staff time, computers, and state fleet vehicles. I don't think we should be using these resources in the making of public policy. I don't think it is a good policy for us to go down that road because of the unfair advantage it puts the public sector in as opposed to the citizens of ND. When we were trying to get Measures 1 and 2 passed this past election, I traversed the state at my own expense, and elected officials and state employees were able to show up driving state fleet cars. It is disheartening to see all the state vehicles at a meeting knowing that they are expending state funds to get the word out on how people should vote. I would like to amend the bill to add the words, page 1, line 9, after the second or add "any other local ballot measure or". There have been local issues as well as the state issues that have been controversial. Some public policy issues are valid issues to encourage free and open debate on what the correct decision should be. Yet in each of those instances, at the local level, we have public officials, public employees using public resources to influence the public view of what's in the public interest. That's wrong and we should stop it. I will get copies of the Attorney General's opinions to you. On the measure, I would suggest an amendment that you include on line 9, "any other local ballot measure or".

**Rep. Delmore:** I do believe that free and open debate is very important. When you got two of those emails, did you try to send correct information to give the other side of the story to the University System? It's pretty hard to control cyberspace sometimes, other than to refute with our own means and ask that that be distributed. Did you try that?

**Robert Harms:** We did. There were a number of us that were graduates of NDSU that tried to do that. The Alumni Association sent out the email, and we thought it was bad policy.

**Rep. Delmore:** What if the email is sent outside of hours. Before the work day or after the work day, how do you determine who you are going to go after with email that is sent and how you're going to charge everybody with a class B misdemeanor?

**Robert Harms:** I think it's irrelevant whether the email was sent out at 4:00 am or 5:01 pm. I was in the Governor's office for 11 years and we were very, very vigilant that we didn't engage in any kinds of these activities, whether it was at 8:00 am or 10:00 pm at night. It is wrong for public resources to be used for these types of matters. I am troubled by the notion that you would pass this bill and that public officials and public employees would be put into a position of "providing information". That troubles me as well, but I haven't crafted the correct solution as to how to address that. I thought that you're not going to intend to impose charging everyone with a class B misdemeanor.

**Rep. Delmore:** If I run a huge corporation, and I feel very strongly about a measure as well, I can let my employees, 24/7 send out information. I'm talking about email, which doesn't really cost that much to send out, you have access to it, and it's on. If I have corporate money behind me, I can have all my employees do the same thing. Are we setting up two classifications of people here.

**Robert Harms:** We are, we should have two different classifications; there are two different types of people. One works for the public sector, and one works for the private sector.

**Rep. Klemin:** I'm wondering about the examples that you gave, it seems like it would be pretty easy to get around those issues if someone used his email at home, instead of used the email at work, and did the exact same thing. It would be okay then. If they took a private car and drove to the event and spoke against something, if they are using their own time, but if

they used the public car and public time, it would not be. Wouldn't the problem that you're seeking to address be something that could be easily gotten around.

**Robert Harms:** I agree with that. But nonetheless, I think we should still set the standard that public resources, whether it's an email or state vehicle, or public employee who is working for the local park district that takes two hours of their day to appear at a public forum and argue in favor of an issue that benefits the park district. When you are a citizen of ND, and you are engaged in what we think is one of the most vital parts of our democracy, the citizen's participation in public debate and voting process, and you take your own time and money to get to an event that's 200 miles away, only to find state vehicles lined up in the parking lot, with publicly paid employees driving them and participating by talking against what you're doing, it doesn't sit very well. It does send the wrong message. As a public employee I shouldn't be disenfranchised from the issues, I should just do it on my own time.

**Rep. Klemin:** It's my understanding that if a state employee here in the Capitol building, came down to testify on a bill on behalf of our agency that is one thing. But if they came down as an individual they have to take official time off, is that right.

**Robert Harms:** I think that is currently the practice, I don't know if it is Central Personnel policy or not. That is how we did business while I worked for the state.

**Rep. Delmore:** Do you have documentation that the public employees you saw did not take any leave from their job. I believe that leave can be granted for a public employee to come down and testify, as well as take unpaid leave for that time and did you check into that, or just assumed that because they were public employees that they took two hours of work time from the government.

**Robert Harms:** I do not have that documentation with me this morning, but to answer your question, yes we did check on that because we were offended by it. I believe no leave was taken.

**Rep. Delmore:** How many employees.

**Robert Harms:** In the example I am thinking of, there was one employee, a high-ranking official; certainly someone that the public would think this person was speaking to them in their official capacity.

**Rep. Delmore:** One person.

**Robert Harms:** In that instance, yes.

**Rep. Koppelman:** You suggested an amendment that you put forth. I think you should visit with Rep. Ruby to see if we can incorporate your amendment.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Daryl Lies, Taxpayer:** Support (attachment). In the handout, it came from the County Extension Director's office, even though it was an email, it was sent on the public system, on public time, with public resources. This also raises another question, was the secretary pressured to send the email. I question whether this was handled and processed correctly. North Dakota taxpayers shouldn't have to shoulder the expenses of public officials using public resources. Taxpayers shouldn't have to compete against themselves on what they believe in. A lot of people are putting money into whether they favor or oppose a measure, and then on the backside, their tax money is being used against them. I find it appalling to think that is happening within our government system. This should be the rule on every level of government.

**Rep. Koppelman:** The prohibition we have in current law against using public resources to campaign for or against a candidate is a no-brainer; everyone would agree with that. Given

some of the discussion this morning, I'm wondering if that's true. Do you see a difference between advocating for or against a ballot measure vs. advocating for or against a candidate in terms of the principle behind it.

**Daryl Lies:** No different, an election is an election.

**Rep. Delmore:** If a public employee sends out information on their own computer outside of their day, do you have an objection to that. Do you think they should be limited totally as to what they can do.

**Daryl Lies:** Once you're off the taxpayer's clock and equipment, you're on your own taxpayer time. That's okay. You have to be able to engage on your time. They are taxpaying citizens also.

**Rep. Delmore:** What if they use a public library computer on their own time, is that also use of public dollars to send something out.

**Daryl Lies:** They are providing a service to those that are in need and don't have resources. Once again we're getting back to whether the person is on their own time or work time.

**Rep. Wolf:** As legislators, we are never really off the taxpayer clock. When can I be a regular citizen then.

**Daryl Lies:** You're an elected official, you're going to be asked questions about your opinion. The public wants to know your opinions, especially when it comes to the next election cycle; to know what your standpoint is on the issues. It is a little different situation because you have a responsibility to your constituents to tell them a) how you stand on an issue; b) the information behind it and hopefully give factual information, not emotion or misleading information like I handed out; and c) you have a responsibility to voice your opinion because the constituents need to know your viewpoint. I believe you are in a different realm of responsibility. If you say



you believe in one thing and vote another way, you are going to pay at the ballot box one way or the other.

**Rep. Wolf:** I'm still a citizen of the state of North Dakota, when do I not act as a legislator. To say, do something after hours is fine, but when am I off the clock.

**Daryl Lies:** Your responsibility ends with your opinion to the constituent. If they question you, they're given the state email address to question you. I don't think this law is meant to stop a legislator talking or visiting with their constituent. Once again, you're going to have your repercussions at the ballot box. Now what you believe legislatively or personally, do you foresee that you have different beliefs legislatively or personally, shouldn't your ideals carryover. That's what people are electing you on. If they don't agree with your ideals, the chances are that they aren't going to re-elect you at the next election.

**Rep. Koppelman:** Currently in law, we are prohibited as legislators from carrying out any campaign, which we run periodically, as legislators. We may support other candidates for office, or oppose other candidates for office while we are legislators. I don't use my state letterhead for that, I don't use my state email for that, and it's been made very clear that it's against the law to do that. I don't have a problem drawing that line and I guess that's why we brought forward this bill. It would add these other entities to the already existing law.

**Daryl Lies:** I think when you try to sway the vote one way or the other on any measure that may be wrong. But if you have a constituent that sent you an email, I believe it is your obligation to answer that. That may be the only way to get in touch with you is by email, phone or mail. But if you're sending out a letter on your letterhead attempting to use the heavy hand of your position, that is a different situation.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Eric Aasmundstad, President of ND Farm Bureau:** Support this bill for all the reasons you have already heard. During the last election cycle, something happened that really disturbed me. I was putting up signs in support of Measure 1 driving through a town here in ND, and along one of the busiest streets in that town, on the property of one of our city colleges, there was a sign that said, "Student Senate said vote no on Measures 1 and 2". When I got home, I called the school, and had a very nice conversation to a point with a person that works at the school about using public property for electioneering. I think we all know that you just don't do that. When asked to remove the sign, the college representative I was talking to, told me that the students here have as much right to speak as anyone, the sign stays. If you want it down, get a lawyer. We all know what it's like to fight City Hall.

**Rep. Griffin:** Would you be opposed if the Student Senate had actually taken a position on a measure, do you think that's appropriate or would be prohibited under the language in the bill.

**Eric Aasmundstad:** I think it is entirely appropriate for the Student Senate to take positions on issues. We would hope that they do. We want the students in the state to become interested and active in government. But there are rules to follow and they should be subject to the same rules as the rest of us.

**Rep. Delmore:** I can appreciate your sign issue, but there were also political signs for specific candidates outside early voting places. I think we have to be careful sometimes where they go. If the governor or attorney general want to take a stand on an issue, is that inappropriate as well.

**Eric Aasmundstad:** I think Mr. Harms addressed that. I think the governor or attorney general as elected officials has to be very careful in the position they take, and how they take those positions and how they promote their views. As Mr. Lies was saying, as elected leaders you have a responsibility to your constituents to answer their questions and I agree that you

shouldn't use state letterhead to further your opinion. You shouldn't use your position to promote it. Of course, everyone is a private citizen as well and has opinions. But I would hope that as state officials they are very careful in how those positions are presented to the public.

**Rep. Delmore:** As a state official, when are we off the time clock, and why should I not be able to state my own honest belief, if I truly feel that way. Yes, if I send something out under the ND seal, maybe that wasn't so bright; but if I'm asked my opinion and I have a strong stance because I, too, value ND and what I want to have happen to it, should my hands be tied because I'm a political official that I can't say what I believe about a measure. We have a lot of initiated measures and referred measures that go on in this state that I think the people take great pride in. Why would you want to tie somebody's hands simply because they are an elected official, worked very hard to get there, and they have an opinion that may be different from mine.

**Eric Aasmundstad:** I don't think I am talking about tying anyone's hands because they are an elected official. In my mind, we are talking about the use of state property, state resources, and taxpayer resources to campaign against taxpayers. To me, there is a difference. As a citizen, you have every right to say your piece. If your constituent contacts you as a representative, it is your responsibility to answer them. You are expected, as an elected state representative, to have the opinion that you want to share your opinion. They know you are a state legislator when they ask you. I think the problem is an agency employee putting forth an agency opinion, and maybe the public doesn't realize that they are putting forth the agency rhetoric. We would certainly support an amendment to this bill to bring in local issues as well.

**Rep. Delmore:** When is the governor, attorney general or agency head off the clock, to be able to give their opinion as a citizen. This bill would gag me during the time I am putting in that time.

**Eric Aasmundstad:** This wouldn't gag anyone. The way I read it, this would say that anyone that serves as an elected official, shouldn't use taxpayer resources, equipment, or work time to further their agenda. There has to be some discretion.

**Rep. Wolf:** Do you think that a university president or a superintendent of schools, who are also paid by taxpayer dollars, as a part of their job, to look at an initiated measure on a ballot and look how it would affect their revenue; isn't it their responsibility to look into those issues and see how it will affect their jobs. Do you agree with that statement.

**Eric Aasmundstad:** I agree.

**Rep. Wolf:** If they look at any type of issue and in their research they found that the effect of that measure, whether pass or fail, has an adverse affect on the school system, etc. shouldn't they be allowed to let their employees know that this is what I have found, and this is how it will affect us.

**Eric Aasmundstad:** I suppose that in their examination of the issue, they want to disseminate information to their employees internally, we don't have a lot to say about that. It's when it goes beyond the internal and goes out to the public is when, in my mind, we have a problem. Can the person at NDSU work in a community to campaign against anything as "Joe", but if "Joe" is the president of NDSU, should he be allowed to campaign on a statewide level as the president of NDSU. I don't think so.

**Rep. Wolf:** If someone received an internal memo, and now disseminates that information to all their contacts, who is responsible.

**Eric Aasmundstad:** I'm not here to point fingers at anybody. I would think that the staff, being state employees, would use some discretion. Can I pass the information on, sure they can. Should they send it out with their state contact at the top of the email, no.

**Rep. Koppelman:** You're here as a lobbyist and representing your organization. If I look at current law and how it would apply to a person campaigning for or against a candidate, I'm not sure if Rep. Wolf sponsored a bill to close Minot State University, do I as a legislator think that Minot State University should be allowed to put a sign on the campus in the next election, saying defeat Rep. Wolf, or use Minot State University resources to defeat her. No, I don't think we should and that's current law. I don't see anything in this that talks about muzzling people. I see a bill that talks about the use of public resources. My question is do you see something that I don't see.

**Eric Aasmundstad:** I don't see this as a bill that muzzles people. People have every right to participate in the process. Government entities should not be allowed to work against taxpayers using taxpayer money.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Aaron Birst, ND Association of Counties:** Support. We tell all counties and political subdivisions that they cannot appropriate money to oppose or support a candidate, and if this bill passes, we would say support or oppose initiated measure. One thing that was touched on earlier, was the freedom of speech information. Under current law, it says political purpose or any activity, such as equipment, etc. The intent of the committee that we've heard is about prohibiting elected officials, or political officials, who may use the telephone to talk about an initiated measure, I would hate to criminalize legislators, county commissioners...I don't think that was the intent here. I think we need to be careful about that. I don't think it's necessary to make a distinction between legislators, agency employees, etc. Quite frankly, the last time we've seen this in an Attorney General's opinion was 2002 L61, where McLean County appropriated some money for a handout or flyer to support their courthouse. The AG said that while this did not violate the corrupt practice act, it certainly is illegal because the counties do

not have the ability to appropriate money for that kind of activity. Our position was that the appropriation was clearly prohibited under current law and under this law if it passes. In the last election cycle, county commissioners got together and discussed an issue's impact on their county government and they formally adopted a resolution supporting or opposing an amendment. I would hate to see those, under this act, be classified as criminal; because I don't believe this is corrupt practice act. If there was an initiated measure, as a ND legislator, as a one party legislature, and you used your state computer to send out an email saying that you think this is a bad idea, then I would shudder to think that you were actually corrupt. I think there is a distinction between the two. If you were actively engaging in a campaign to support/oppose an initiated measure, then that might be a different story. I would hate to think that the Governor would be corrupt if someone calls his office and asks how he feels about a certain issue. Because the governor used a telephone, I would hate to see that become an improper use of the telephone.

**Rep. Koppelman:** You're a former prosecutor, you know about prosecutorial discretion. If somebody had called you when you were a prosecutor and said that "a person works for the county and I just called him and asked who they were voting for in the legislative race in the district this year and they are in support and they were using the county resources" would you prosecute them.

**Aaron Birst:** I wouldn't prosecute them until the legislature called me and said you are violating the law. I would hope that prosecutors would not go crazy and start prosecuting every person that talks with or is connected with state's resources. Certainly if there was a general appropriation coming out of the state legislature to support whatever the case may be, that would be different. This isn't just a bill passed to create litigation. There still has to be some common sense available here too.

**Rep. Dahl:** In any of those cases, did they ever look at the definition of what advertisements meant, because it seems to me this definition that is violated when there is an advertisement taken out by a certain entity. Does that leave out an email advertisement or are they talking about paid advertisement. Have you run across parameters on that matter.

**Aaron Birst:** ND Supreme Court really didn't get into that kind of detail in the case that was before it. They said there are still some trivial things that obviously taxpayer resources are used for, but we don't believe should be applied to. That wasn't the intent the legislature. They didn't define it specifically for advertisement or not.

**Rep. Delmore:** I think scenarios need to be pointed out in this bill, because sometimes bills have ramifications that when we drafted the bill, we probably didn't have that intent in mind. Could there not be a prosecutor in the state who would decide to take this and run with it, and there might be lots of people indicted because of it.

**Aaron Birst:** Yes, quite frankly because of the political atmosphere that surrounds initiated measures, I could imagine a scenario where during a campaign this gets litigated either at a criminal realm or the civil realm. It is right to ask those questions. Quite frankly, this has been litigated throughout the country; never at the US Supreme Court but I can cite at least 15 cases that dealt with freedom of speech of an elected official, public employees, equal protection rights that they to express their opinion vs. taxpayers. There are a number of decisions that are actually authored by Supreme Court authors that say that taxpayer money is for the proponent and the opponent's bills. I think that by clarifying the intent of this bill and hopefully the intent of the committee could agree that one bill or a cell phone call would not be a corrupt practice.

**Rep. Zaiser:** Would the initiation of a slap lawsuit to basically muzzle somebody from challenging a county, would that essentially violate this law.

**Aaron Birst:** The question whether some sort of enjoinder of action could have some sort of effect on bill, this particular law requires an expenditure of public resources. The question in my mind is what to call a resource, not whether a lawsuit has necessarily been filed. This law could have a baiting effect that it could be interpreted so broadly that any public resource at all could make it corrupt.

**Rep. Klemin:** The last sentence in this particular subsection contains an exception. It says the term does not include activities undertaken in the performance of a duty of a state office, or a position taken in any bona fide news story, commentary or editorial. I think that takes care of some of the things that have been discussed already this morning. But I'm wondering if this last sentence should be expanded at all or clarified as to what a duty of a state office means.

**Aaron Birst:** I should have pointed that out. The last sentence does not include political subdivisions, so I would certainly suggest adding political subdivisions into the section. Hopefully I thought that was intent of the legislature previously. In thinking of how this should be written, it should be written to the effect that state officials and political subdivision members undertaking their duty, which would be to inform citizens and take positions, I think that is the answer.

**Rep. Klemin:** For example, on line 18, a duty of a state office, I don't know if that means a political subdivision or any kind of local government office or not. Do you think that word "state" should be changed to something else.

**Aaron Birst:** I think it could be worked to allow not only elected officials of state and local government..., therein lays the problem. How far do you go. Agency heads that are not elected. I think that could be interpreted that if that is your job's duty to protect county budgets or the DHS budget, then you could use public resources, not necessarily funding resources, but you could the telephone.



**Rep. Koppelman:** From what you have said your objective here is to try and make sure that there is some legislative intent attached to the passage of this bill, if it does pass. As the prime sponsor of the bill, I assure you for the record, my intent is common sense.

**Rep. Delmore:** I looked at that sentence as well as Rep. Klemin did, "duty" – what is my duty, my opinion, what does it cover. I'm certainly asked for an opinion sometimes as an elected official, an agency head would be under the same. I'm sure Al Jaeger as Secretary of State has been asked to give his best opinion. How are we going to interpret all of this. That's what bothers me about the bill.

**Aaron Birst:** I would suspect the supporters that we heard earlier would say that you still have the right to speak on it, but you can't use state resources, such as letterhead.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition.

**Bev Nielson, ND School Board Association:** Opposed. It is unclear on how to enforce this bill and feel that this will muzzle some of our elected officials, such as school board members. Their job is to research the issues that are pertinent to the school district and get their views out to the public that they are representing. We already try to keep partisan politics out of school board business. We don't feel that there is a place for it. I am not here to comment on political subdivisions, just for the school board issues. We are going down a slippery slope here of muzzling people that we all need, because they are the voices of our information. Both sides on any issue are to be allowed to make a case for their side. We don't want to see a school board member have to take personal time to come down here to Bismarck to let the legislature know how a certain bill will affect their schools, etc. They need to be able to do this. If you have an initiated measure regarding a school district, and the school board can't take a position on it, it would be like telling you, as legislators, you can't vote on a bill. It is

what you are elected to do. Now appropriating funds, taking out paid advertising, those are things that for years we've known are out of bounds.

**Rep. Koppelman:** I keep reading the bill and what it is supposed to do. In the last sentence it talks about "this term does not include activities undertaken in performance in a duty of a state office or a position taken in any bona fide news story, commentary". Maybe I do not understand. To me, a slippery slope is where we are taking what the bill says versus what you might say. Is there confusion right now? This is a statute, that right now, prohibits the use of public funds for or against a candidate. All this does is add ballot measures to that. Are school boards languishing in confusion as to whether they can or cannot use public funds and advocate for or against a candidate. All this would do is add ballots measures to that. It says nothing about bills in the legislature, it says nothing about resolution of meetings; it talks about spending public funds.

**Bev Nielson:** We have had people interpret an article in a newsletter as spending public money to promote a position. There wasn't money appropriated for the purpose of printing that newsletter. The people who are going to go after people who are opposing them, are going to take all of those instances. There is no confusion over supporting or endorsing political candidates. None at all. That is private politics, don't get involved in it. You're talking about an individual or person. Initiated measures, in my opinion, are incredibly difficult. I don't see them the same. I don't think the bill, as it stands, is free from conflicting issues. I just want to make sure that school boards and their CEO's are free to examine the impact of statewide issues or issues on their local district and take a position on that, if they so choose and communicate, not by spending money, what their research has shown and what their concern is as an elected official.

**Rep. Koppelman:** I think the only question is that appropriate spending of public money.

**Bev Nielson:** I think that appropriation of funds is an entirely different issue, I think they are more clearly defined as inappropriate than are some of the other things that were talked about, such as using the phone, etc. or putting an article in the monthly newsletter. We don't want to get so heavy-handed that school boards that were elected, can't communicate what their opinions and findings are to their public.

**Chairman DeKrey:** Thank you. Further testimony in opposition to HB 1347.

**Pat Seaworth, General Counsel for ND State Board of Higher Education:** Opposed. First, this bill will change long-standing state law, that has been interpreted by a number of Attorney General's opinions. Right now, we have clear guidance on what public employees and public officials can do. This, particularly after hearing testimony of some of the proponents and sponsors, will muddle things up like Rep. Klemin's question about the last sentence and how that would be interpreted. The Board opposes this bill because it would effectively muzzle the board and even prevent the board from even taking its position on a measure that would directly impact the board. For example, a measure, a proposed constitutional measure, that would change submissions of the Board of Institutions or even fill those positions. The board, under this bill, as I heard the proponents and sponsor, explain it, the Board cannot even state its position to people who were interested, whether the board agreed with or opposed a measure, the board could not even state its position because the board cannot take any position or action except in a public meeting. The board can't have a public meeting without expending public funds. Every time the board meets, the board expends public funds, uses public resources. As I interpret this bill, as explained, the board could not meet in response to an initiated measure that would close state institutions and take a position opposing that measure and indicate that position to its constituents, to the public because in doing so, the board would have to use public funds. I would urge you to consider amendments to clarify

that. The Board has only a limited ability to restrict students' public first amendment right of speech, as upheld by the courts' decisions.

**Chairman DeKrey:** As you read the present law, you have absolutely with the state employees, at a university, sending out emails to fire up the students and get them to vote their special interests. That doesn't bother the Board of Higher Ed at all.

**Pat Seaworth:** No, I didn't say that. I didn't mean to suggest that. That's not the job of our faculty members or other employees. It is the job, we believe, of Higher Education and officers to communicate, educate and advocate for institutions and positions taken by the board. A faculty member or other employee that is spending work or class time, doing something like this, that is not acceptable.

**Chairman DeKrey:** In that case, was anything done then.

**Pat Seaworth:** I'm not familiar with that particular instance.

**Rep. Koppelman:** One debate method is to take the extreme to the absurd and use an exception or peripheral question and just blow it all out of proportion. I'm not accusing you of that but I'm wondering if that is where we are going with this discussion. Do you have any concern at all about the realization that taxpayer dollars, be it by fleet of cars going to a meeting some place, be it something going on at a public entity's letterhead, whatever. Does this type of expenditure offend your sensibilities that this is wrong when it comes to a political candidate and you already stated that you think it is. What is the difference if it's a political candidate who may be one that goes to one of those schools. Should all those resources not be used to campaign against that candidate in the next election, if it's in the interest of the institution to do that. Do you have concern about the use of public funds for this kind of business.

**Pat Seaworth:** Our concern is to comply with the law. From the board's perspective, and the Chancellor's perspective, that's what we are always striving to do and think we did so. In the recent election, the point is that it is the job of the State Board of Higher Education members and the Chancellor, to advocate for or against measures that will directly impact the operation of the institution and the abilities of the board and the university system to do what the constitution requires it to do.

**Chairman DeKrey:** Do you feel the public's frustration when they pull up to a public meeting and they are private citizens, they are paying their own way, their own gas, and they pull up to a building, and I've had this happen to me many times, all parking spots are filled with vehicles that say SF on them. Is that fair to the public citizen when he has to take on town hall.

**Pat Seaworth:** If you are referring to a board meeting, of course, there are going to be all sorts of state vehicles there. My concern is that this will prevent the board from taking a stand for or against a measure that will directly impact the board and the restrictions that go along with that.

**Rep. Dahl:** You know that it's the responsibility of the board to advocate for a position. Would that be taken care of by the last sentence in this section, that says the term does not include activities undertaken in the performance of a duty, would that not take care of your concern.

**Pat Seaworth:** I don't know if that takes care of it or not; but that is in law now. As Rep. Koppelman said, this bill would only add initiated measures and puts them in the same category as partisan political activities. If this is what this bill does, then that means that the duties of the State Board members or the Chancellor, does not include advocating for or against an initiated measure. Because they can't do that, it's prohibited. Just like they can't ask state board members about political candidates, they could not advocate for or against an initiated measure. Again, the board can't take a position on something unless it spends public

funds, because the board can't take a position unless it is in a public meeting. You can't have a public meeting, without spending public funds first.

**Rep. Boehning:** If this bill would pass, do you think the University system will be barred from providing information on what effect the initiated measures would have on them. I don't think you would be barred from providing information to the public. I think it would probably bar you from holding or promoting legislation. I don't think there is anything in here that would bar you from providing information. But it will bar you from stating if you are for or against a measure.

**Pat Seaworth:** I agree that there is nothing in the bill that would bar the board or any of its officers from providing information. It would bar the board from stating its position, advocating for or against a measure. That is what the bill would do.

**Rep. Klemin:** What we have in this bill is one definition of several, that are in this particular statute, and I've heard discussion already this morning of a number of amendments that are going to be made to this definition on political purpose. I'm wondering if, while we are at it, if you would want to take the opportunity to look at the other definitions and see if there should be some clarification there that would take care of your concerns; like the definition of property or services.

**Pat Seaworth:** Again the position of the Board is that this bill is unnecessary and it would restrict the ability of the board to react to measures. I would welcome the opportunity to look at amendments.

**Rep. Delmore:** I have a problem with, is when we are talking "information" is the validity of "information". Who decides that my facts, which may differ from another legislator, aren't the truth, especially when I can back them up with my sources. Another legislator can have another set of facts and says "you're publishing information that isn't valid because I have the

real facts". Is there a problem with that as you see it, an interpretation of what "information" is that can be given out by school boards, your board, county commission, etc.

**Pat Seaworth:** I don't see that as an issue or a problem. Again, the Board is able to put out information.

**Chairman DeKrey:** Thank you. Further testimony in opposition.

**Jerry Hjelmstad, ND League of Cities:** I wasn't going to testify but I was a little more reassured after hearing some of the comments that a mayor would be allowed to present information on a particular measure, but I guess I would need to see some language modified to include political subdivisions as well as state officers.

**Rep. Koppelman:** Has your organization taken a position opposing the legislation or are you just making a suggestion.

**Jerry Hjelmstad:** No we have not taken a position yet.

**Chairman DeKrey:** Thank you. Further testimony in opposition.

**Lynn Bergman:** Did I just hear from the University System that they would like to advocate for or against a candidate as well. I have worked for four different cities in three different states. Specifically my experience in Colorado Springs, CO. I was the asst. engineer. I got up all the time to represent the views of the city council. There wasn't anything that I couldn't say as long as it was in line with what the city council told me I had to say. But as a city employee, I had a responsibility as well not to use my email, my city car, to promote my particular political agenda. The law I was living under in the state of Colorado, is the same law that is proposed here. If I had a quarter for every time in my 40 year engineering career where I said this is the United States of America, not the Soviet Union, I'd be a rich man. This is the U.S. This law takes no rights from any individual; it never did when I was an employee, I was just as passionate as you see my passion today on many issues. If I disagreed on an issue and

wanted to get up and say something, I would make sure that they knew I was testifying as an individual taxpayer, not as the assistant engineer. So it's not as muddy as you think.

**Rep. Delmore:** If you're the Governor of North Dakota; however, do you say I know I'm your governor but I guess I'll go off record now and as a public citizen this is my opinion. Is that a necessity for an elected official to do, and that includes the school superintendent, school board member, etc.

**Lynn Bergman:** I personally believe that we have a problems with our state right now, there are too many of our elected officials believe that more spending equals a better society. That's the philosophical difference that we have. A lot of our elected leaders in the state seem to think that the more money they have to spend for the taxpayers to get re-elected, the better it is. To answer your question by saying the problem with that is that you're not taking on any of your fiscal responsibilities as a leader. With respect to the Governor, what would be the appropriate way for a Governor to handle Measure 2. I believe he had a perfect right to get up and answer whatever is asked by the press, such as are you for or against this measure; to explain why he was for or against it. I don't have any problem with that. As an elected official do you have a responsibility to say, should he direct the department heads to put out emails to all their friends and family, no, I don't think so. I think an elected official has a responsibility to the voters to let them make the decision, not to inordinately try to affect their votes.

**Rep. Delmore:** If the Governor speaks, he certainly has influence. In the last two elections, he was won by major landslide. Certainly as he speaks and goes to the press, etc. he would be influencing people then would he not.

**Lynn Bergman:** Yes, that's his job.

**Chairman DeKrey:** Thank you. Further testimony in opposition. We will close the hearing.



## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1347

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/9/09

Recorder Job Number: 9014

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will take a look at HB 1347. What are the committee's wishes.

**Rep. Koppelman:** I move the amendments Rep. Ruby presented on 1/26/09.

**Rep. Boehning:** Second.

**Rep. Koppelman:** Essentially this bill adds initiated or ballot measures to the political purpose definition, the practical result of that is just as agencies in state government cannot now spend your tax dollars to advocate for or against a candidate, they also couldn't spend your tax dollars to advocate for or against a measure. The amendment that Rep. Ruby brought down says basically the same thing except that it would apply to political subdivisions as well as state agencies. I should point out that the AG has issued an opinion, which I think was part of the testimony that was handed out during or after the hearing. It essentially said the same thing as the amendment says. The principle in state law is that they already can't do this. So he has advised political subdivisions that they cannot appropriate money for this purpose. In one case in Cass County, for example, when the county commission wanted to build a jail and they proposed and passed a resolution to that effect, they were advised that they couldn't spend county dollars to advocate for it. So they actually raised money privately and there was

a campaign in favor of it, and the commissioners could go on record individual or corporately, of course, in favor of it; but they just couldn't spend the tax dollars to advocate for it.

**Rep. Klemin:** I'm just looking at this AG's opinion, and he concludes "it's my opinion that while a school district may provide the public with neutral, factual information, it may not lawfully expend public funds to advocate a school board's position on a pending ballot measure". So there's a distinction between providing information and providing a position statement.

**Rep. Koppelman:** To address that point, I think we heard a lot of boogey man in the hearing on this bill. I visited at length with the AG about this, and he supports it in principle and doesn't feel that any of the problems that we heard about would come to pass. In other words, we heard some people say that they couldn't even take a position on a ballot measure we're proposing because we're meeting on school grounds, expending public dollars to do that, etc. and the AG's office has assured me that those are incidental uses that are in the course of their normal discharging of their duties, they wouldn't be affected at all by this, just as they are not by his Opinion.

**Chairman DeKrey:** Voice vote. Roll call vote.

**7 YES 6 NO 0 ABSENT                      AMENDMENT MOTION IS CARRIED**

**Rep. Klemin:** I would like to further amend the bill, on line 18, overstrike "state" and insert immediately thereafter "public".

**Rep. Koppelman:** Second.

**Chairman DeKrey:** Voice vote. Amendment Motion carried.

**Rep. Koppelman:** I move a Do Pass as amended.

**Rep. Boehning:** Second.

**Chairman DeKrey:** Discussion.

**Rep. Koppelman:** I did visit with several people since the hearing, in addition to the meeting with the AG's office to clarify whether their concerns were valid. I really think this cleans up our law, and really puts it where we all thought it was, including the AG, that public funds cannot be used for this purpose, whether it is a candidate or ballot measure.

**Further discussion ensued.**

**Rep. Boehning:** I call the question.

**8 YES 5 NO 0 ABSENT**

**DO PASS AS AMENDED**

**CARRIER: Rep. Koppelman**

90383.0101  
Title.

Prepared by the Legislative Council staff for  
Representative Ruby  
January 26, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1347

Page 1, line 9, after the underscored comma insert "a political subdivision ballot measure."

Renumber accordingly

VK  
2/10/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1347

Page 1, line 9, after the underscored comma insert "a political subdivision ballot measure."

Page 1, line 18, overstrike "state" and insert immediately thereafter "public"

Renumber accordingly

Date: 2/9/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1347

**HOUSE JUDICIARY COMMITTEE**

Check here for Conference Committee

Legislative Council Amendment Number Motion on Amendment

Action Taken  DP  DNP  DP AS AMEND  DNP AS AMEND

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore		✓
Rep. Klemin	✓		Rep. Griffin		✓
Rep. Boehning	✓		Rep. Vig		✓
Rep. Dahl	✓		Rep. Wolf		✓
Rep. Hatlestad	✓		Rep. Zaiser		✓
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar		✓			

Total (Yes) 7 No 6

Absent \_\_\_\_\_

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

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

*Amendment Motion Carried*

Date: 2/9/09  
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1347

**HOUSE JUDICIARY COMMITTEE**

Check here for Conference Committee

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

Action Taken  DP  DNP  DP AS AMEND  DNP AS AMEND

Motion Made By Rep. Koppelman Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore		✓
Rep. Klemin	✓		Rep. Griffin		✓
Rep. Boehning	✓		Rep. Vig		✓
Rep. Dahl	✓		Rep. Wolf		✓
Rep. Hatlestad	✓		Rep. Zaiser		✓
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 8 No 5

Absent \_\_\_\_\_

Floor Carrier: Rep. Koppelman

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

**REPORT OF STANDING COMMITTEE**

**HB 1347: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1347 was placed on the Sixth order on the calendar.

Page 1, line 9, after the underscored comma insert "a political subdivision ballot measure."

Page 1, line 18, overstrike "state" and insert immediately thereafter "public"

Renumber accordingly



2009 SENATE JUDICIARY

HB 1347

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1347

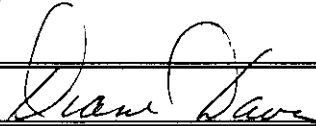
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 03/09/09

Recorder Job Number: 10467

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

**Relating to the use of state or political subdivision services or property for political purposes.**

**Representative Koppelman** – District 13 – Introduces the bill and explains its intent. This says simply you can't dig into the public coffers and go run an ad campaign. The Attorney General has issued an opinion with regard to political subdivisions. When this bill was introduced in the House it dealt with state agencies and political subdivisions was added in the House.

**Senator Nething** – Tells him of an amendment the committee received for this bill.

**Rep. Koppelman** – He read the amendment but does not think it is necessary. It is exactly what the Attorney General's opinion has already said.

**Senator Nething** – States that if it's an Att. General's opinion no one knows about it but if it's a law everyone knows about it.

**Rep. Koppelman** - Assures them the school board's know about it.

**Senator Nething** – The concern raised indicated that local municipalities felt they wouldn't be able to inform and notify voters of factual information regarding a ballot measure. This makes him believe they were not aware of the Att. General's opinion.

**Rep. Koppelman** – Responds maybe that municipality wasn't. That does clarify that groups who communicate regularly with political subdivisions are watching this bill and if it does pass his hope would be that they notify their membership of the Attorney General's opinion. This law doesn't change that with respect to them.

**Senator Olafson** – Assumes this bill came forward by a real world situation. Can you share specifics?

**Rep. Koppelman** – Would like to make clear this bill is not targeted at anyone. This bill is targeted to correct an omission in law that has come to light.

**Robert Harms** – See written testimony – In support.

**Senator Schneider** – If it is in press release format would that fall into this legislation?

**Harms** – There was concern on the House side that the bill would prohibit a public official from responding to a press inquiry. That is a legitimate part of an official's responsibility to respond to a press inquiry.

**Senator Schneider** – Does a student using a college e-mail address follow into this/

**Harms** – Replies, no. The language is very broad. But if a professor did use it, it would be unfair.

**Senator Nething** – Asks why is this bill necessary if you think the Attorney General's opinion works.

**Senator Olafson** – Asks if he thinks the amendments would do any harm to the bill.

**Harms** – States, yes, it creates the implication that it would be a good thing for the school board to educate on a particular issue. The bill is necessary because not every knows the Att. General's opinion is out there.

**Sandy Clark** – ND Farm Bureau – In support of the bill.

**Senator Nething** – Said he is not sure if this just goes to public funds. Wouldn't this cover your organization?

**Clark** – States, they are not a public organization, they do not operate with tax payer dollars.

**Senator Nething** – Would like it pointed out that this is just limited to public funds.

**Clark** – Said it is not in the bill.

Opposition

**Bev Nielsen** - ND School Boards Association – See written testimony.

**Pat Seaworth** – ND University System – see written testimony.

**Senator Nelson** – Does this bill prevent you from testifying on any constitution amendment that comes before the Legislature.

**Seaworth** – Said he doesn't interpret that way.

**Senator Nelson** – What is a constitutional measure?

**Seaworth** – He assumes it is a new provision, it would be a new section.

**Senator Olafson** – Said he doesn't have a problem with an entity using public property to analyze a measure and what effect it may have on that entity.

**Seaworth** – Said there is nothing in the statute to make that activity unlawful or criminal. He goes through a two step analysis plan.

**Greg Burns** – ND Education Association – His main concern is taking law that applies to political parties and candidates and trying to apply that to ballot initiatives. Said he hasn't heard anything that determines that determines this is needed. He thinks this opens a Pandora box.

**Todd Kranda** – Missouri River Energy Services – See written testimony. He proposes an amendment.

**Senator Nelson** – Asks him if his organization uses public funds.

**Kranda** – Responds, the organization would not be affected by this but it is the utilities of the public municipalities that would be affected.

Close the hearing on HB1347

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1347

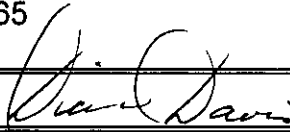
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/23/09

Recorder Job Number: 11365

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Committee discusses the proposed amendments.

Senator Nething goes over the idea of the bill and wonders if they want the bill at all.

Senator Olafson thinks it one thing for a political subdivision to meet on public property and review a measure and take a position but a whole different thing for them to start spending money or public resources on advertising or active effort to defeat or support a measure.

Senator Schneider said he doesn't like the idea of the bill. In its current form he thinks it goes too far.

Senator Nelson thinks the language is pretty broad.

Senator Nething thinks this may be an interesting study.

The committee discusses the Kranda amendment.

Senator Fiebiger said there is two issues, funding and opinions.

Committee says it's complicated and maybe should be made into a study.

Senator Fiebiger and Levi will work on an amendment.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1347

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 4/1/09

Recorder Job Number: 11591

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Committee discusses the proposed amendment. The amendments converts this bill into a study.

Senator Lyson moves for a do pass on the amendments

Senator Schneider seconds

Verbal vote on the amendments, all yes

Senator Schneider motions a do pass as amended

Senator Lyson seconds

Vote – 5 yes – 1 absent.

Senator Schneider will carry

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1347

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the appropriate use of state or political subdivision services, property, or other resources for political purposes.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY - USE OF PUBLIC PROPERTY OR SERVICES FOR POLITICAL PURPOSES.** During the 2009-10 interim, the legislative council shall consider studying the appropriate use of state or political subdivision services, property, or other resources for political purposes. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly



Date: 11/1/09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES *HB 1347*  
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

Check here for Conference Committee

*Fiebiger Amendments*

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By *Sen Lyson* Seconded By *Sen. Schneider*

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman			Sen. Tom Fiebiger	1	
Sen. Curtis Olafson - V. Chair.			Sen. Carolyn Nelson	1	
Sen. Stanley W. Lyson			Sen. Mac Schneider		

Total (Yes) \_\_\_\_\_ (N) \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Verbal yes*

Date: 4/1/09  
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

1347

Senate JUDICIARY Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Sen. Schneider Seconded By Sen. Lyson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman	X		Sen. Tom Fiebiger		
Sen. Curtis Olafson - V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 5 (N) \_\_\_\_\_

Absent 1

Floor Assignment Sen. Schneider

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

**REPORT OF STANDING COMMITTEE**

HB 1347, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1347 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the appropriate use of state or political subdivision services, property, or other resources for political purposes.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY - USE OF PUBLIC PROPERTY OR SERVICES FOR POLITICAL PURPOSES.** During the 2009-10 interim, the legislative council shall consider studying the appropriate use of state or political subdivision services, property, or other resources for political purposes. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

2009 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1347

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1347

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 4/15/09

Recorder Job Number: 11887

Committee Clerk Signature



Minutes:

**Rep. Koppelman:** We will call conference committee on HB 1347 to order.

**Attendance:** All members present.

**Rep. Koppelman:** If the Senate can please explain their amendments.

**Sen. Lyson:** We put this bill into a study so it didn't get killed on the Senate floor.

**Sen. Nething:** We thought it would be best to study it because I'm not quite sure what you wanted to happen with the bill.

**Sen. Schneider:** There isn't a definition of what "appropriate" is.

**Rep. Koppelman:** I'm not quite sure what we would study, I think it's pretty straightforward. I appreciate you keeping the concept alive. I'm sure that you could make a case that the public could benefit from information provided by taxpayer dollars in an election candidate as well but we don't allow that. We don't allow other dollars to be spent advocating for or against candidates. It seems to follow that you wouldn't want public dollars to be used to advocate for or against measures and that's pretty much what the original bill said.

**Sen. Schneider:** What does "bona fide" mean. We don't want a public agency taking out an ad in the newspaper advocating for one side or the other. It seems that you could do a news story about the measure with appropriate information. That seems like it would be fine.

**Rep. Koppelman:** Is it your legal opinion that this section, which is the same section that bans the use of public dollars for candidates and campaigns, that if the Governor or Attorney General or a legislator or some other public official calls a press conference for any campaign, in the Capitol and uses the Capitol podium, that they are violating the law.

**Sen. Schneider:** That's why I think that Legislative Council should study this matter.

**Rep. Koppelman:** My point is that goes on regularly. I don't think it has ever been challenged with respect to the prohibition for candidates.

**Sen. Nething:** There is a distinction between a measure, which can't talk, and a candidate, who can talk. A candidate can represent themselves. A measure cannot. So you have to have knowledge of the measure, people need information about it. I just don't know how bad it is, and I just don't know how to handle it, if it is bad.

**Rep. Zaiser:** I agree with the Senator in terms of the initiated measures vs. the candidate.

The key is to further define this without getting so caught up in the minutia of the definition. I too, am concerned about this bill being a little too broad. I think we could get into some problems.

**Rep. Boehning:** I don't think the intent of the legislation, during the testimony that I recall, that we weren't going to ban the school boards, etc. from saying that this is how it is going to affect us. We're trying to say is that they can't go out and advocate yes or no on the measure. I think that was our intent in the House. Information can be disseminated, but not advocated for one way or another.

**Sen. Lyson:** How is the City Commission, in a public forum going to say anything other than I think we should bring a measure to raise sales tax, etc. and the Commission voted to put it on

the ballot?

**Rep. Koppelman:** I agree that we are seeing situations that may not exist. For example, if a public body votes for or against putting a measure on the ballot, putting a tax increase before the voters. Obviously, they weighed in on that issue. I don't think there is anything in this bill, nor certainly was it the intent of the sponsors or of the House to repeal the US Constitution or its right to free speech. I think clearly what we're saying is that you shouldn't spend tax dollars to advocate for or against. In fact, there is an AG's opinion, currently in place, that governs this for political subdivisions as I understand it. If we can rely upon that the only question would be should state agencies be bound by the same restriction; or should they be free to do things that other political subdivisions under that AG's opinion are not allowed to. That opinion further makes clear that these folks can clearly state their position; participate in news gathering exercises; advocate as much as they want. They cannot spend taxpayer dollars to do so. That's what the House is driving at. If you can find a way to better define it, so that it gives the Senate more comfort, I think we would be onto something. I don't think that a study really accomplishes much.

**Sen. Lyson:** If the City Commission votes to put a measure on the ballot to raise the sales tax, are you going to have to use funds from the city to advocate for that purpose.

**Rep. Koppelman:** True, they cannot use the funds directly, in the sense that ...

**Sen. Lyson:** How can they use them?

**Rep. Koppelman:** Let me finish my answer. I said "directly" and the reason I said that is the intent is to say to use your example, if the City Commission puts something on the ballot, they couldn't then say, oh by the way, here is a \$5,000 appropriation to run ads in the newspaper, etc. in order to promote this measure on the ballot. If asked by the Press, do you favor this, of course, they're going to answer and they're free to do that. In fact, I made a trip to the AG's office, when we were debating this in the House, and spoke to him about this and he explained

some of the situations which had been raised in the House hearings as I suspect they were in the Senate, obviously from your comments. He said that those are incidental uses. If you sit in a City Council chamber, and a reporter comes up to you and asks a city councilman if he supports the tax increase that you are putting before the voters, and that councilman voted for it, certainly he or she can say yes, or could hold a press conference announcing that if they want. It's a question of spending tax payer dollars to advocate for or against that we're trying to get at here.

**Sen. Lyson:** What if you are sending out a letter to all the residents in the city about the sales tax measure, you are spending tax payer dollars.

**Rep. Koppelman:** True, if you were to do that, you find a way to pay for the postage rather than using the tax payer money to do it. If you want to send a letter out or put an ad in the newspaper or write an Op Ed piece or letter to the Editor of the newspaper, as a commissioner, saying I support this, that's fine. In fact, I'm familiar with a case, where that very thing occurred, where a commission wanted to promote the particular measure on the ballot, and they were advised, I don't know if it were on based on the AG's opinion, or just good sense, not to spend the tax payer dollars to do that. They went about raising money to finance that campaign. I think that's entirely appropriate, just as it would be for a candidate. It's a question of spending proper use of tax payer resources.

**Sen. Schneider:** I'm not worried about hosting a news conference would fall under any activity. You would be using staff and state resources to call a press conference.

**Rep. Koppelman:** I have no problem in further clarifying that to allay those concerns, if that's the sense of the committee. I think, however, one of the benefits of this meeting, as well as the hearings we've had, is that there will be a clear legislative history indicating what our intent is if this bill does pass. That would make very clear, as does the AG's opinion, that incidental



use of presence in a public building, advocacy at a public meeting, is not what we're getting at here. We're getting at spending tax payer's money inappropriately.

**Rep. Zaiser:** I understand what you're saying. I went through the hearings in the house, as you know I had questions within our committee. I understand what you're saying about incidentals, but the definition, everybody's not always going to understand what the intent of this legislation is. This is used a lot for initiated measures. I just think right now, I have some problems with the statement as it stands.

**Rep. Koppelman:** It stands as a study now. I think what we're talking about is finding some common ground.

**Rep. Zaiser:** I'm in favor of the study, in finding the right language.

**Rep. Koppelman:** Further discussion of the committee. I would like us to look at the AG's opinion and try to clarify this. I think there's been some discussion as to how we can clarify this. Maybe we can look at some of that too, and see if there is some way to find a solution. My only fault with the study is two-fold; 1) it delays the issue and 2) I don't know what we would study. We've had two hearings on it in the House and Senate and we're had a good discussion on it now. I certainly think it is something that we can come to grips with before leaving at the end of the session.

**Sen. Lyson:** I don't think the Senate will pass the bill as it stands without the study.

**Rep. Boehning:** Reading the language in the study, LC shall consider the study. Basically, we're not going to get anything anyway. They may consider it, but more than likely that not they won't know what to study. I don't know if you can clarify the language in there. I think the intent of the House is to not allow political subdivisions to put money into efforts directly to fund measures or anything on that order. That is our intent. If they come out with a PSA, that's not a problem. That's what they are there for, to put out information not to advocate for

or against. If they want to advocate for or against a measure, they should raise money from other sources, just like an individual or group outside of the government would have to do. It's kind of hard to fight city hall. Right now this is saying that city hall can win all the time because they have the resources; funding and full-time staff. How can you fight that; that is our intent; to make a level playing field.

**Sen. Schneider:** What are we trying to accomplish with this bill, what are we trying to prohibit.

**Rep. Koppelman:** I think in answer to your concern, I think that's why we want to look to see if there is a way to better define or to take care of some of the concerns that appear to exist in terms of what the study would do. I don't hear anybody objecting to what the intent of the bill is. What I hear is concerns about unintended consequences. So if we can craft some language that allays those concerns, it seems to me then that there shouldn't be any

objections to the bill. I'm not here to attack anybody. The one example that I thought about and used was an example that didn't occur but could have under current law. We had a major initiated measure during the last election dealing with WSI. Legally WSI could have spent your tax dollars to say, please defeat this measure. We don't like it, we think it's bad, etc. They didn't do that, but it would have been perfectly legal under current law. Other states have provisions like this and I think it makes a lot of sense. I think if you ask any tax payer in ND on the street, if they want their tax dollars to be used to convince you to vote for or against a measure on a ballot, I think you would get the answer of "no" 100% of the time.

**Sen. Schneider:** Does WSI have discretion to use funds to do something like that.

**Rep. Koppelman:** They were attacked during the last legislative session for using funds inappropriately. Under current law, it would be okay. Maybe next election, there might be an initiated measure dealing with highways and if the DOT liked or disliked it, it could currently spend tax dollars to advocate for or against it. I just don't think that is an appropriate use of

public resources and I would be surprised if any of us did. I think it would be good legislation for us to find a way to prohibit it.

**Rep. Zaiser:** I, too, agree with the other House members that a Study is going to accomplish anything. On the other hand, I don't think the present language is too broad and doesn't get at where we need to go. From my perspective, I think we should recess and look at it, come back and kill it, or fix it to make it acceptable.

**Rep. Koppelman:** My hope here would be to find some common ground, particularly if we all agree that the objective is a good public policy objective. We certainly should be able to figure out how to deal with whatever concerns are out there. We will recess and meet again.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1347

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 4/20/09

Recorder Job Number: 12012

Committee Clerk Signature



Minutes:

**Rep. Koppelman:** Call conference committee on HB 1347 to order.

**Attendance:** All present.

**Rep. Koppelman:** I had the intern get us copies of the Attorney General's opinion and court case that Sen. Nething had referenced when we met last (see attachment AG 2004). I think my reading of those documents indicate that this whole issue of incidental usage is pretty well outlined and some of the fears may be overblown.

**Sen. Nething:** If we have the AG's opinion, why do we need a bill.

**Rep. Koppelman:** My discussions with those involved, I think what the AG's opinion does is, it clarifies that we rely on Supreme Court opinions and other court opinion that have held that tax dollars if used at all, they are evenly divided from people that may support or oppose any particular measure that is put before the voters and therefore it is appropriate to use them to advocate for or against some of these measures. But it further clarified that using public funds, they aren't talking about some of these incidental things, that's where I thought the court case, as you had mentioned in the last meeting, is applicable because this is the same section of the law as the one that prohibits the use of public funds for advocating for or against a candidate, and that was what that case referred to. It clarified that incidental use is not really an issue

and what we are talking about here is really more overt use. Since that is fairly well established law, dealing with that same section of law, with regard to candidates running in a campaign, the feeling of the folks that I talked with including the Attorney General are that this is pretty well established, the incidental use. If the fear is, I would conclude the opposite, to say that not that the bill wasn't needed but that the fears of those who are concerned about the bill aren't willing to because incidental use is not the point, not the issue.

**Sen. Lyson:** I don't believe that the bill is needed because there is an AG's opinion.

**Rep. Koppelman:** My hope would be not to dig in our heels in for one chamber's opinion but rather seeking good public policy. To that end, I would be happy to invite the AG to come and clarify some of the questions. He's willing to do that. I disagree and I don't think there has been any indication, that what we're seeking to do in the law, in the bill before us, is

accomplished. The opinions and the other items we referenced, talk more to the objections to the bill, than they do to the substance of the bill. The bill includes advocating for or against ballot measures in our law, which currently prohibits public funds to be used to advocate for or against candidates. That is not part of current law, it's not something that the court case speaks to, and it's not something that the other AG's opinion speaks to. They speak to the incidental use that some seem to be so afraid of, and it's made clear that isn't a valid concern. I still think that the bill is necessary because we don't have a long list of things that says that you can't use that money for these purposes and that was the point of the bill. We simply tried to address the concerns that were raised.

**Rep. Boehning:** After reading the opinion of the AG, I think this is something that we should have on the books. It clarifies in the law what can and can't be done. I don't think it is going to

clutter up the century code by adding two lines into code. I think this is good legislation. I

thought it should be amended further to put something else on this, but I think this clarifies what government money can be used for in campaigns. This is a good bill.

**Rep. Koppelman:** One additional piece of information I would like to share is the South Dakota law on this matter. Someone had asked how many states do or don't have this kind of provision. First of all, we should be reminded that only a limited number of states actually have initiated referendums. Many states may have a prohibition against using public funds in elections to try to influence the outcome of the election, but typically those are elections dealing with candidates; not ballot measure, because they don't have initiated referendums. One state that does is South Dakota. This is what they have in their law:

"Chapter 12-27-20. Expenditure of public funds to influence election outcome is prohibited. The state, an agency of the state, and the governing body of a county, municipality, or other political subdivision of the state may not expend or permit the expenditure of public funds for the purpose of influencing the nomination or election of any candidate, or for the petitioning of a ballot question on the ballot or the adoption or defeat of any ballot question. This section may not be construed to limit the freedom of speech of any officer or employee of the state or such political subdivisions in his or her personal capacity. This section does not prohibit the state, its agencies, or the governing body of any political subdivision of the state from presenting factual information solely for the purpose of educating the voters on a ballot question. " (see attached)

That lateral language in their statute has been suggested by some as a model for amending this if there is an interest in doing that to further allay the fears of those who might have a concern.

**Sen. Schneider:** I am referring to the AG's opinion 2002-L-61; I don't know about the 2004 opinion. But there is a line in the 2002 opinion (can't hear, 9:47). We need to enlighten not proselytize.

**Rep. Koppelman:** Do you feel that that same chilling effect was given by the AG's opinion and that therefore the bill would have no effect. It seems to me, that that is the point of these opinions and court cases to say that the very boogey man, if you want to use that term that has been trotted out by opponents of this legislation, are not an issue because the court and the AG have already opined on that in a fashion.

**Sen. Schneider:** I am comfortable with the AG's opinion and agree with Sen. Nothing that there really isn't a need for this in law. People can go back and look at the AG's opinion and may see it differently, but I am comfortable with what I've read in the opinion.

**Rep. Koppelman:** So you're saying that we should not legislate if an AG's opinion has been dealt with a particular issue.

**Sen. Schneider:** I think if we're comfortable with the AG's opinion of the law in that matter there is no need to legislate that in the code.

**Rep. Koppelman:** I have two questions about that: 1) is there anything in the AG's opinion that actually deals with the law we have on the books in ND on this topic.

**Sen. Schneider:** Again, the 2002 Opinion that I spoke of, it appears that the county paid for newspaper ads advocating an issue. He cited a Florida case.

**Rep. Koppelman:** Well, it was on the books in the state of Florida, according to the AG.

**Sen. Schneider:** The AG's opinion was based on the law of our state. How can the AG say something that isn't in law.

**Rep. Koppelman:** What statute.

**Sen. Schneider:** I don't have that in front of me.

**Rep. Koppelman:** He's not citing ND law, he's citing a legal principle as handed down by the US Supreme Court, and he cited a Florida court decision. Show us the statute, if there is a statute that we are duplicating in ND in the code, I'd love to see it. I'm not aware of one. I think what you just said was our law already covers this.

**Sen. Schneider:** I don't know how the AG can write an opinion without basing it on ND law.

**Rep. Koppelman:** I believe that the reason that most people ask for the AG's opinion, is because there isn't a clear statement in ND law on a particular topic. So they go to the AG and ask what's correct and what's incorrect. The AG, in answering that, cited as I understand it, as you've indicated, a Florida statute, and perhaps cited the legal principle from the US Supreme Court case dealing with the legal principle of how public dollars are to be used. So the AG's opinion is based upon a statement of principle in law, not upon a statute that we have on the books in ND. The reason that opinion was sought was we don't have a clear law on this issue. We're the policy-making, law-making branch of government so it falls to us to pass laws. If we see an area where there is a gap, and obviously there is one here, it seems reasonable to fill the gap by making a law. So the question is, those that are concerned about that, raised issues about what they thought passing a law like this would do, and he have responded to that, the AG responded to it in an Opinion, saying that these concerns are really invalid because they aren't going to be a problem. If there is a further fear that they would be a problem we could easily adopt language like SD did to further clarify that that is not the intent of the legislature that free speech rights are guaranteed and so on.

**Sen. Schneider:** I don't think the AG was writing a treatise on this.

**Sen. Nothing:** I don't think that the House wants to accept the Senate amendments and the Senate has spoken and it is not going to accept the House bill. We are deadlocked. Consequently I'm not so sure in view of that, I don't see that this is going anywhere. So



perhaps we should dissolve this conference committee and then you can take other action on the House floor.

**Rep. Koppelman:** Is it your proposal, Senator, that we name new conferees.

**Sen. Nething:** That would probably be up to the Leadership.

**Rep. Zaiser:** In response to Sen. Schneider's comments, I do believe when the AG writes an opinion, they may cite examples from other states, but basically he was interpreting ND law, and that's the way I see the AG writing opinions, he is interpreting law as he sees it. I am also of the opinion that the more I look at the opinion, I was opposed to this initially, but thought that maybe something could be done, but I just don't want to muck it up too.

**Rep. Koppelman:** The other point that we haven't discussed is the fact that the AG's opinion is silent on state agencies. It was crafted specifically for political subdivisions. The bill deals with both. I think there are still issues that we haven't really resolved and should seek to do that. I'd be happy and have already asked the AG if he is willing to come and explain further his opinions, he indicated a willingness to do that. I share Sen. Nething's opinion that we can't accomplish anything further today, but I hope that we would strive to do so in the future.

**Sen. Lyson:** I guess you can parade anyone in here to talk to us, but I think the Senate is not going to budge. I don't know if it will do any good.

**Rep. Koppelman:** The House remains willing to amend the bill and seek a solution. So I would hope that we could do that. With that we are adjourned.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1347

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 4/24/09

Recorder Job Number: 12211

Committee Clerk Signature

*Denise*

Minutes:

**Rep. Koppelman:** We will call to order the conference committee on HB 1347.

**Attendance:** All present.

**Rep. Koppelman:** Rep. Boehning has amendments that he is working on with Legislative Council. He is getting copies of it. I had a visit with the AG the other day, and I wanted to update the committee. He makes it a practice not to amplify on his opinions, when he has stated an opinion, it's a document that has some weight. I think that he and other AGs' follow that practice as well. He did share a copy of an opinion from 2002, and I think this is the one we saw earlier. If you look toward the end of the packet, he also included the actual document that was in question, was the subject of the opinion and also some of the information about the project that they were advocating, that the public funds were spent on. It was kind of a poster child, good example, of what this bill seeks to avoid. I wanted to share that with the committee. We still stand at ease until Rep. Boehning returns. Let me describe and read the amendment to you. The amendment that Rep. Boehning is intending to present to the committee basically attempts to deal with some of the concerns that have been raised about unintended consequences. The idea that if this were to become law, would it be something where public bodies could not meet and take a position on a ballot measure, if somehow free

speech could be stifled, etc. Those concerns were raised in the House as well. I think the reason that the House passed the bill, as it did, is because we felt satisfied that those concerns had been dealt with by things like the AG's opinion, the Supreme Court case, and the other things we've talked about. The AG had kind of indicated that as well, in terms of incidental use of public property, at a public meeting where you say the township supervisors endorsed ballot measures such and such, whatever it might be, that that would not be considered a violation because you would be on public property, but it would strictly be incidental use. So the amendment that Rep. Boehning wanted to propose says, the first part of the amendment is the replacement. If you look at the House version of the bill, because it would involve the Senate receding and the conference committee amending further. But part of this is actually the last portion of the current law. It says in (1) "Political purpose does not include activities

undertaken in the performance of a duty of a state public office or position taken in any bona fide news story or commentary or editorial; (2) discussing or taking a position in a public meeting in support or in opposition to a measure or proposed amendment; or (3) hosting a public forum in which opposition and support of a measure or proposed amendment is presented. The last portion of the amendment is on page 2, on the back, where it says "this section may not be construed to limit the freedom of speech of any officer or employee of the state or a political subdivision in that individual's personal capacity." In other words, it doesn't bridle free speech, it's just getting at the issue of using public funds and resources for a campaign.

**Sen. Lyson:** We will take the amendments and go through them with our committee and meet again on Monday so we have to change to go over them.

**Rep. Koppelman:** We will do that. We are in recess until Monday.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1347

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 4/27/09

Recorder Job Number: 12283

Committee Clerk Signature *R. Moore*

Minutes:

**Rep. Koppelman:** We will call the conference committee on HB 1347 to order.

**Attendance:** All present.

**Rep. Koppelman:** When we last met, we had passed out amendment .0301 for the committee to look at. What are the wishes of the committee.

**Sen. Schneider:** There is a technical correction that needs to be made. On Section 1, #2, (2) (a), the sentence should read as follows: Undertaking activities in the performance of a duty of a public office or a position taken in any bona fide news story, commentary, or editorial. The word "state" should be removed before "public". I think it was included inadvertently. I don't believe that the House or Senate version of the bill had the word "state" included.

**Rep. Koppelman:** I think you're right. I think that was language as they amended the bill, and it was in current law, and should have been crossed through.

**Rep. Boehning:** I move the amendments with the correction of removing the word "state".

**Rep. Zaiser:** Second.

**Sen. Schneider:** Under (2)(c), hosting a public forum at which support of or opposition to a measure or amendment is present. Now that that no longer considered a political purpose,

would a candidate for office be able to use public resources to rent out a ballroom in the Alerus Center to discuss a measure using taxpayer dollars.

**Rep. Koppelman:** I think that's misworded. I think that's an error in the amendment. I have the original language that I was showing you the other day that was handwritten. I think when Legislative Council amended that, they made a mistake. Because the intent was to say hosting a public forum at which support of "and" opposition to a measure or amendment is presented. That was how it was originally worded when it was given to the LC. The intent there was to say as long as it is open to both sides, it's fine to do. Even as I read that, on a personal level, if the county commission had a measure that they were putting on the ballot and they supported it, and had taken a vote to support it, and they were going to hold a public forum on this on Tuesday night at 7:00 pm, people from both sides are welcome. As long as they offered to present opinions from both sides, I think they'd be fine.

**Sen. Schneider:** I have no problem with that applying to a county commission. My concern is how you would apply this to a candidate. Again, an incumbent, would they be able to use public funds to rent out a room to hold a forum. I think that is the behavior that no one wants to see; we want that behavior discouraged. I think it may open the door to that.

**Rep. Koppelman:** As I read it, I think it would be stretching the intent there to talk about spending public funds to do it. All it says in the amendment is hosting. My thought would be it would apply more along the lines of "you're in a small town, you hold the gathering at city hall, and talk about the ballot measure and you offer both sides to be able to talk". To translate that to a candidate, I would think the same kind of thing would apply that, if that candidate wanted to host a forum, not just as a private capacity as a citizen, but as a candidate running for State legislature. If I do that, with this bill and I host it on public property, I also have to invite the

other side. So, Senator, would you make the motion then to amend the motion to turn “or” to “and”, was that your intent?

**Sen. Schneider:** That wasn't my intent. My intent was to worry about how this would apply to candidates. I think it's probably covered, support of or opposition to, I don't think you could exclude someone under that.

**Rep. Koppelman:** Well, let's take that as a motion. Is there a second to change the “or” to an “and”.

**Rep. Boehning:** Second.

**Rep. Koppelman:** We have the motion before us.

**Sen. Nething:** Apparently then, if we put the word “and” in there, and there is a public forum that is hosted by the candidate, and no one appears in opposition, then they are in violation of this section because there wasn't opposition there. This is one of the problems that I have with this piece of legislation. I just raise that point.

**Sen. Schneider:** I would withdraw my quasi-motion there just for that reason. I'm not sure that we need it here, the word “and”.

**Rep. Koppelman:** Like I mentioned, that was the original intent as I read what I gave you the other day, when we were waiting for the amendment, the wording there is “and”. So that was the intent. But if you have withdrawn your motion.

**Sen. Schneider:** I guess what makes that okay, is that it is a public forum so even if the purpose of the county commission of calling this meeting is to express their opposition to a measure, certainly the other side would be heard at that public meeting if they wanted to, but they wouldn't be required to show up.

**Rep. Koppelman:** I think the intent of having “and” was that it could not be a one-sided meeting by design. If the county commission was floating a ballot measure to raise a tax to

build a bridge, they couldn't say that they were holding a public forum on this and since support is represented that would then satisfy the law, if we leave it as an "or". I think the intent is to say public forums are fine even if they are at the county commission chamber; but they have to be even-handed, they have to be fair. I think if we could clarify that support of or opposition to has to be presented or offered an opportunity, some language to that effect to address Sen. Nething's concern, I think that may be acceptable to say. As long as they say "all views are welcome", etc. to give people the opportunity. If no one shows up, they can't control that. That can't create an opposition if there is none. I think the spirit would be, that that would be okay anyway. We could add "or offer an opportunity" I guess. Technically we have the motion still on the floor. The maker of the motion has offered to withdraw the motion, but the second is still in play.

**Rep. Boehning:** I seconded the "and". When I look at subsection 2c, say if a county commission calls a meeting, they're going to have a public forum, they know who the opposition is, they offer the other side an olive branch, and invite them to take part in the forum. If they don't show up, that's okay, they were invited. You can't force anyone to come. I think that should be sufficient.

**Sen. Schneider:** I think the public forum covers it; I don't think there is any member in opposition to a measure that wouldn't feel that they shouldn't show up. I think they would want to come. I don't think you can force the county commission to drum up opposition if there isn't any. Of course, they are free to show up.

**Rep. Koppelman:** I guess we could clarify that if we did change the "or" to an "and", if you feel it is necessary to offer something at the end of the sentence, to the effect of, "or offered the opportunity to present" or something like that, to get back to Rep. Boehning's point. I could

see where if you left it as “or” some could abuse it I suppose. That certainly wasn’t the intent of the original amendment language that we saw. I think it was a typo at LC.

**Sen. Lyson:** Every time you read it, you can get something different from it. I think we should leave it alone.

**Rep. Koppelman:** Go back to the original House version.

**Sen. Lyson:** I think the way it is printed here in the amendment it makes more sense to me.

**Sen. Schneider:** It does to me also.

**Rep. Zaiser:** So it would read “or” opposition to...

**Sen. Schneider:** I do think it covers your concern. I think the public forum is where support of or opposition to a measure is presented. It’s not a public forum in support of.

**Rep. Koppelman:** So you’re saying that the word “forum” implies the opportunity to speak.

**Sen. Schneider:** Yes, that is how I read it. It can’t be a public forum and only express one side. That wouldn’t be a public forum; that would be a news conference.

**Rep. Zaiser:** I concur with the Senator, that you don’t have to get into the detailed language. I think that support or opposition is implied with the phrase “public forum”.

**Rep. Koppelman:** We have an offer from the maker of the motion to withdraw his motion, does the second withdraw the second.

**Rep. Boehning:** I withdraw my second.

**Rep. Koppelman:** The legislative intent is that both support and opposition is welcome at these forums. The whole concept of having forum implies that both are welcome, but one or the other may not appear.

**Rep. Boehning:** I guess one of the other concerns that I have is that each side would have

equal time in the presentation. If one side has 20 minutes, then the other side would have 20 minutes as well. There should be equity.



**Rep. Koppelman:** The intent is also that there be equity of equal opportunity for both sides of an issue. Further discussion. We will take a voice vote on the amendment .0301. Motion carried.

**Rep. Boehning:** I move that the Senate recede from its amendments as printed on page 1141 of the House Journal and be amended with the adopted amendment .0301.

**Rep. Zaiser:** Second.

**Rep. Koppelman:** Roll call vote.

**6 YES 0 NO 0 ABSENT                    MOTION CARRIED**

**Rep. Koppelman:** We are adjourned.

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 1347 (, as (re)engrossed):

Date: 4/13/09

Your Conference Committee H. Jud.

For the Senate: 4/24  
4/15 YES / NO

For the House: 4/24  
4/15 YES / NO

4/20  
✓  
✓

4/20  
✓  
✓  
✓

Sen Lyson ✓			Rep Koppelman ✓		
Nothing ✓			Boehning ✓		
Schneider ✓			Zaiser ✓		

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: \_\_\_\_\_

CARRIER: \_\_\_\_\_

LC NO. _____	of amendment
LC NO. _____	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: \_\_\_\_\_

SECONDED BY: \_\_\_\_\_

VOTE COUNT    \_\_\_ YES    \_\_\_ NO    \_\_\_ ABSENT

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1347

That the Senate recede from its amendments as printed on page 1141 of the House Journal and page 980 of the Senate Journal and that Engrossed House Bill No. 1347 be amended as follows:

Page 1, line 1, remove "subdivision a of subsection 2 of"

Page 1, replace lines 5 through 20 with:

**"SECTION 1. AMENDMENT.** Section 16.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-10-02. Use of state or political subdivision services or property for political purposes.**

1. No person may use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or any agency, department, bureau, board, commission, or political subdivision thereof, for any political purpose.
2. The following definitions must be used for the purposes of this section:
  - a.
    - (1) "Political purpose" means any activity undertaken in support of or in opposition to a statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure, or the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. ~~The term~~
    - (2) "Political purpose" does not include activities undertaken:
      - (a) Undertaking activities in the performance of a duty of a state public office or a position taken in any bona fide news story, commentary, or editorial;
      - (b) Discussing or taking a position at a public meeting in support of or in opposition to a measure or amendment;  
or
      - (c) Hosting a public forum at which support of or opposition to a measure or amendment is presented.
  - b. "Property" includes, but is not limited to, motor vehicles, telephones, typewriters, adding machines, postage or postage meters, funds of money, and buildings. However, nothing in this section may be

construed to prohibit any candidate, political party, committee, or organization from using any public building for such political meetings as may be required by law, or to prohibit such candidate, party, committee, or organization from hiring the use of any public building for any political purpose if such lease or hiring is otherwise permitted by law.

- c. "Services" includes, but is not limited to, the use of employees during regular working hours for which such employees have not taken annual or sick leave or other compensatory leave.

- 3. This section may not be construed to limit the freedom of speech of any officer or employee of the state or a political subdivision in that individual's personal capacity.

Renumber accordingly

VR  
4/27/09  
192

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1347

That the Senate recede from its amendments as printed on page 1141 of the House Journal and page 980 of the Senate Journal and that Engrossed House Bill No. 1347 be amended as follows:

Page 1, line 1, remove "subdivision a of subsection 2 of"

Page 1, replace lines 5 through 20 with:

**"SECTION 1. AMENDMENT.** Section 16.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-10-02. Use of state or political subdivision services or property for political purposes.**

1. No person may use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or any agency, department, bureau, board, commission, or political subdivision thereof, for any political purpose.

2. The following definitions must be used for the purposes of this section:

a. (1) "Political purpose" means any activity undertaken in support of or in opposition to a statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure, or the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. ~~The term~~

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2 of 2

organization from using any public building for such political meetings as may be required by law, or to prohibit such candidate, party, committee, or organization from hiring the use of any public building for any political purpose if such lease or hiring is otherwise permitted by law.

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3. This section may not be construed to limit the freedom of speech of any officer or employee of the state or a political subdivision in that individual's personal capacity.

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 1347 (, as (re)engrossed):

Date: 4/27/09

Your Conference Committee HJUD

**For the Senate:**

**For the House:**

	YES / NO			YES / NO	
<i>Sen. Lyson</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>Rep. Kappelman</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Sen. Nothing</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>Rep. Boehning</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Sen. Schneider</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>Rep. Zaiser</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (S/HJ) page(s) 1141 - \_\_\_\_\_

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

, adopt ~~(further)~~ amendments as follows, and place 1347 on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1347 was placed on the Seventh order of business on the calendar.

DATE: 4/27/09

CARRIER: Rep. Kappelman

LC NO. <u>.0301</u> of amendment
LC NO. _____ of engrossment.
Emergency clause added or deleted
Statement of purpose of amendment

MOTION MADE BY: Rep. Boehning

SECONDED BY: Rep. Zaiser

VOTE COUNT 6 YES 0 NO 0 ABSENT

**REPORT OF CONFERENCE COMMITTEE**

**HB 1347, as engrossed:** Your conference committee (Sens. Lyson, Nething, Schneider and Reps. Koppelman, Boehning, Zaiser) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1141, adopt amendments as follows, and place HB 1347 on the Seventh order:

That the Senate recede from its amendments as printed on page 1141 of the House Journal and page 980 of the Senate Journal and that Engrossed House Bill No. 1347 be amended as follows:

Page 1, line 1, remove "subdivision a of subsection 2 of"

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- 3. This section may not be construed to limit the freedom of speech of any officer or employee of the state or a political subdivision in that individual's personal capacity.

Renumber accordingly

Engrossed HB 1347 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1347

Proposed addition to "Prohibited conduct" in NDCC 54-44.3-25

## 2007 North Dakota Century Code

### Title 54

#### State Government

#### CHAPTER 54-44.3

#### CENTRAL PERSONNEL SYSTEM

**54-44.3-24. Application of chapter to existing employees.** All employees in positions which are in the classified service as defined in this chapter and who, prior to July 1, 1975, have served continuously for a period of six months or more, or as regular seasonal employees have satisfactorily served in such positions through one seasonal service period, shall be certified to such positions, and grades and classifications, under the personnel system, and shall not be subject to examination or trial service periods of employment.

**54-44.3-25. Prohibited conduct.**

1. No person may make any false statement, certificate, mark, rating, or report with regard to any test, certification, or appointment made under this chapter, or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter and the rules.

2. No person may, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the classified service.

3. No employee of the division, examiner, or other person may defeat, deceive, or obstruct any person in that person's right to examination, eligibility, certification, or appointment under this chapter, or furnish to any person any special or confidential information for the purpose of affecting the rules or prospects of any person with respect to employment in the classified service.

*4. Employees in the Central Personnel System shall be selected without regard to political considerations, shall not use any state facility or resource or the authority of any state office in support of or in opposition to any candidate or ballot measure, and shall not campaign actively for or against any candidate or ballot measure on state time or in any manner calculated to exert the influence of state employment.*

**54-44.3-26. Penalty.** Any person who intentionally violates any provision of this chapter is guilty of an infraction and, upon conviction thereof, is, for a period of one year, ineligible for appointment or employment in the classified service.

From: Paul Nelson  
Date: Thu, Oct 23, 2008 at 9:08 AM  
Subject: Vote No on Measures 1 & 2

Colleagues:

North Dakota State University will suffer immediate financial damage if measures 1 and 2 pass on the November ballot.

Many of our students are voting for the first time. Without demanding that they vote a certain way, you can use the attached information to show how the defeat of Measures 1 and 2 will affect their lives. We can hope that they vote self-interest.

If you want or need more information on the measures, Kelly has at her desk an explanation of the ballot measures.

Paul E. Nelson, Ph.D.  
Professor & Head  
Communication  
NDSU Dept #2310

There is indeed a Paul E. Nelson who is the chairman of the Department of Communication at NDSU. I've placed a call to Mr. Nelson's office requesting confirmation of this email.

I hope this email isn't true. Not only is this probably an illegal use of taxpayer resources, but also you would hope that in an institute of higher learning the professors would let the students think for themselves.

Plus, there's more than enough money in the state government right now to pass measures 1 and 2 without cutting any spending.

**Update:** I spoke with Dr. Nelson.

I asked him if he had sent the email, and he straight out confirmed it: "Yes I did."

I asked him if he used his University email address to send out the email and he responded by saying that "everyone" on campus was doing it "because we don't want measure 1 and 2 to pass."

I asked him if he knew the email system was funded by the taxpayers and he said "well put me in jail, it's full of drug dealers."

**Update:** A reader sends along the attachment to the email. You can download it here, or just read it below:

VOTE NO ON MEASURES 1 & 2

TUITION INCREASES FOR A TOTAL OF 8-12%

SIGNIFICANT REDUCTIONS IN NEEDS AND MERIT-BASED STUDENT GRANT PROGRAMS

75% OF ND STUDENTS GRADUATE WITH DEBT AVERAGING OVER \$20,000.00.

ND STUDENTS ARE SECOND HIGH IN THE NATION IN NUMBER WITH INDEBTEDNESS.

TELL ND PARENTS AND RELATIVES ABOUT THE CONSEQUENCES OF THESE MEASURES. EVEN OUR POPULAR GOVERNOR OBJECTS.

**Measures 1 and 2  
Talking Points**

for the **State Board of Higher Education  
and North Dakota University System CEOs**

Same four  
pages given  
to Senate.

R. Harms  
Hand out -

**About the Measures**

Support HB 1347

**Measure 1** would lock away almost all of the state's oil tax money in:

- a trust fund with no purpose earning a low rate of interest
- a trust fund that would be almost impossible to access, requiring a supermajority of the Legislature to withdraw only 20 percent – even during a state emergency
- a trust fund that would not balance today's needs while properly investing for the future

Measure 1 would limit the oil tax revenue that could be used to fund the state's priorities to \$100 million per biennium, a significant reduction from the current biennium in which \$216.7 million in oil tax revenues was spent to provide, among other things, broad-based property tax relief.

Measure 1 would put a flawed plan into the state constitution and would prevent oil tax revenue from being put to work for North Dakotans.

**Measure 2** would wipe out 15 percent of the state's budget, costing North Dakotans more than \$400 million in revenue per biennium and making it one of the most severe tax cuts in the country.

Measure 2 would make property tax relief impossible and would significantly cut funding for K-12 schools, college and universities, public safety, health care and other services.

About 20 percent of the benefit would go to North Dakotans who earn \$750,000 or more per year. 40 percent of taxpayers would receive average tax cuts of \$45 per year.

*The impact of Measure 2 would be magnified by the passage of Measure 1 because oil and gas revenues could not be used to make up the difference!*

**Impact on the North Dakota University System**

To self-fund the 2009-11 cost of continuing current operations (\$33 million) or to cover the cost to continue current operations and provide employee salary increases (based on 4 percent annual increases, totaling \$54 million), the NDUS would need to increase tuition and/or reallocate funds from other programs and priorities, resulting in the following potential negative impacts:

- Additional tuition rate increases of 5 percent per year (cost to continue only) to 8 percent per year (cost to continue plus 4 percent annual salary increases) for a total of 8 percent to 12.5 percent increase per year

*In perspective: While tuition and fees at NDUS four-year universities continue to lag regional averages, these costs consume a larger share of household income in North Dakota than elsewhere in the region. Tuition and fees at the two-year colleges exceed regional counterparts*

- Elimination of some or all of 2009-11 faculty and staff salary increases

*In perspective: Nearly one-half of NDUS faculty and 40 percent of staff are over age 50. One-fourth of the American workforce will reach retirement by 2010, resulting in a national shortage of workers at a time when North Dakota faculty salaries already lag regional averages by 21 to 31 percent.*

- Further delays in building and infrastructure maintenance

*In perspective: The NDUS currently has in excess of \$110 million in deferred maintenance on state facilities which impacts student college choice and increases operating and repair costs.*

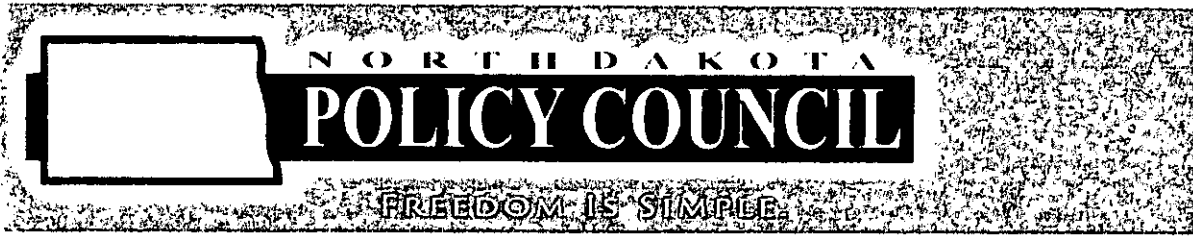
- Significant reductions in needs-based or merit-based student grant programs

*In perspective: More than 75 percent of North Dakota students apply for financial aid, and a typical four-year university student graduates with \$15,000 to \$20,000 in federally insured student debt.*

- Elimination of some academic programs and services on all 11 campuses, resulting in faculty and staff reductions

*In perspective: According to a national report, the North Dakota University System is already among the top five performers relative to the level of funding.*

- Delays in improving campus security intended to further protect students, faculty and staff in the event of on-campus emergencies
- Delays in upgrades to classroom equipment and technology, limiting student exposure to current learning tools
- Delayed program start-ups in response to state business and industry needs, thereby negatively impacting the state's economic growth
- Reductions in teaching opportunities and the provision of health services through the UND School of Medicine and Health Sciences
- More limited student opportunities for workstudy, internships and on-the-job training activities
- Increased class sizes, thereby limiting individual student contact
- Reductions in the number of classes offered, thereby extending time-to-degree completion
- Lack of resources to enhance student academic and career guidance
- Reduced ability for the NDSU Extension Service to address the emerging needs of a strong agricultural economy
- Reduced ability of the North Dakota Agricultural Experiment Station and Research Extension Centers to increase the economic vitality of crop and livestock production



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## BOARD OF HIGHER EDUCATION ALLOWS NDUS EMPLOYEES TO LOBBY WITH TAX DOLLARS

Monday, November 03, 2008  
NDPC Investigates by Jacqueline Dotzenrod  
Issue: Education

The North Dakota Board of Higher Education was walking a fine line in mid-October when it released a statement in blatant opposition to North Dakota Measures 1 and 2. However it danced right over it when it allowed its employees to campaign against the measures.

### NDPC Features



### NDPC Blog

Blog RSS

Sunshine on Schools "Featured Website" at Americans for Tax Reform

Sunday, January 25, 2009  
by Brett Malin

A Real Change: Less Sales Tax

Friday, January 23, 2009  
by Brett Malin

NDPC in the Media

Monday, January 13, 2009  
by Brett Malin

Researcher: ethanol won't produce big gains for rural America

Monday, January 12, 2009  
by Brett Malin

Cutting Corporate Tax Rates: Sooner Would Be Better

Monday, January 12, 2009  
by Brett Malin

View all

### Upcoming Events

There are no upcoming events at this time.

\*

"The SBHE recently adopted a motion opposing Measures 1 and 2. The chancellor's office has issued a press release and distributed "talking points" explaining the SBHE position. NDUS officers and employees, acting in their official capacities, may support the SBHE position (and oppose the two measures). They may use public funds and state facilities or equipment to distribute information supporting the SBHE position."

Chancellor Bill Goetz claims that the aim is to convey information. However, with his statement, the SBHE not only adopted, but also campaigned for a position using public resources. While there may not be a state law, it does raise the question – is it ethical?

More than 15,000 North Dakota citizens signed the petition to get the measures on the ballot. Those 15,000 citizens pay taxes that support the SBHE. Is it right that their own tax dollars are used to campaign against something they support?

"State law does not prohibit in terms of conveying information so that the public at large is informed to what the consequences will be," Goetz said. "It's very clear based on legal opinion that information can be disseminated..."

While it is one thing to disseminate information, it is another to encourage the use of public funds, facilities and equipment to distribute a political agenda.

Jacqueline Dotzenrod is an investigative reporter for the NDPC. She can be reached at (701)640-9847 or [jdotzenrod@policynd.org](mailto:jdotzenrod@policynd.org) (JavaScript must be enabled to view this email address)

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Thursday, October 23, 2008

Are you a member? If so, please login. Not a member? Please register. Have you forgotten your password?

Sponsored Results Search 6 results found for 'Measure 2' Chuka | Premium

2-cup Measure We Offer 3,500+ Kitchen Choices. Deals On 2-cup measure. ChainingTools BizPate.com

Bcl-2 ELISA Kits Accurately Measure Bcl-2 Levels - Quality Assays from R&D Systems. www.RnDSystems.com

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### NDSU Professor Using Taxpayer Resources To Advocate Against Initiated Measures?

By Rob on October 23, 2008 at 01:32 pm 50 Comments SHARE

Apparently one Dr. Paul E. Nelson, chairman of the Department of Communication at North Dakota State University, has been sending out emails to his colleagues (using his university email address) asking them advocate against North Dakota ballot measures 1 and 2 (the oil trust fund and the 50% income tax cut).

Friends of ATR has a copy of the alleged email in question:

From: Paul Nelson  
Date: Thu, Oct 23, 2008 at 9:08 AM  
Subject: Vote No on Measures 1 & 2

Colleagues:

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Professor & Head  
Communication  
NDSU Dept #2310

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VOTE NO ON MEASURES 1 & 2

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Blogroll

4



LETTER OPINION  
2004-L-55

August 23, 2004

The Honorable Bob Martinson  
State Representative  
2749 Pacific Avenue  
Bismarck, ND 58501-2513

Dear Representative Martinson:

Thank you for your letter requesting my opinion on whether a school district may expend public funds to advocate the school board's position on a pending ballot measure. Consistent with recent opinions issued by this office, it is my opinion that while a school district may provide the public with neutral factual information, it may not, without express legislative authority, expend public funds to advocate the school board's position on a ballot measure.

ANALYSIS

Your letter concerns a ballot measure included on the recent primary election ballot. The question before the voters was whether to eliminate the Bismarck Public School District's existing unlimited mill levy. You submitted a flyer you indicated was mailed in a school envelope and apparently with school-paid postage to parents in the school district regarding the impact of the mill levy measure. The flyer (and others like it) was signed by a principal and the president of the local parent-teacher organization. The return addresses on the flyers included a Bismarck middle school and the Bismarck Public Schools' office. Press reports appear to indicate the flyers were sanctioned by the school board.<sup>1</sup>

---

<sup>1</sup> See Sheena Dooley, *Bismarck Voters Back School District's Taxing Authority*, Bismarck Tribune, June 9, 2004 ("Letters were sent to parents and ads were run on the radio. Board president Marcia Olson said those efforts paid off. 'I was feeling very frustrated by the end of this because I didn't feel like we were getting our message out because if people understood what the results would be if the measure passed, they would vote in our favor, which they did,' Olson said. 'We kept on trying and using every avenue we could to get the word out and we were successful.'").

A similar situation was presented in N.D.A.G. 2002-L-61 involving a county using public funds to publish a newspaper insert containing information regarding a pending measure on whether to approve the construction of a new courthouse. One of the cases cited in the opinion was Citizens to Protect Public Funds v. Board of Education, 98 A.2d 673 (N.J. 1953). In that case, a school bond referendum was at issue and a local school board authorized funds for printing a booklet containing not only facts regarding school demographics, architectural sketches, the costs and tax impact, but urging a yes vote and listing the consequences of a no vote. I quoted the following passage from that case:

[t]he public funds entrusted to [a political subdivision] belong equally to the proponents and opponents of [a] proposition, and the use of the funds to finance not only the presentation of facts merely but also arguments to persuade the voters that only one side has merit, gives the dissenters just cause for complaint. The expenditure then is not within the implied power and is not lawful in the absence of express authority from the Legislature.

N.D.A.G. 2002-L-61 (quoting Citizens, 98 A.2d at 677-78). I concluded the following in N.D.A.G. 2002-L-61:

Although a fact-finder conceivably could reach a contrary conclusion, it is apparent to me that no fair minded reading of the newspaper insert could lead to a conclusion other than the overall intent and purpose of the newspaper insert was to promote passage of the bond issue, and not to provide a fair and balanced presentation of the issues before the voters. In my opinion the newspaper insert went beyond a fair presentation of facts to advocacy by the county for passage of the bond issue for a new courthouse. The expenditure of public funds for the newspaper insert in such a manner is inappropriate and unlawful.

Likewise, in this instance, while a fact-finder could conceivably reach a different conclusion, it appears to me that a fair-minded reading of the flyer in the context in which it was distributed was to promote defeat of the measure and not to provide a fair and balanced presentation of the issues. See note 1 above. The flyer mentioned that similar measures have failed twice in the past; it predicted significant staff and teacher layoffs and impacts on class size and possible consolidation or closure of smaller schools. The flyer also argued school programs, courses, teaching materials, and building maintenance would be adversely affected. It also downplayed potential property tax savings "compared to the potential long-term impact on property values if school quality in the community is compromised." While undoubtedly the passage of the ballot measure would have had serious fiscal effects for the school district's budget and programs, the flyer could have been drafted in a more fair and balanced manner.

LETTER OPINION 2004-L-55  
August 23, 2004  
Page 3

I found no statute that permits a school district to expend public funds for the purpose of issue advocacy on pending ballot measures. Cf. N.D.A.G. 2004-L-36 (district health unit authorized by law to expend public funds to publicize effects of secondhand smoke). Consequently, it is my opinion that while a school district may provide the public with neutral factual information, it may not lawfully expend public funds to advocate a school board's position on a pending ballot measure. School board members and district employees are certainly free to communicate their position on ballot measures that may affect the fiscal well-being of the district; they cannot, however, do so at public expense absent a statute permitting such activities.

Sincerely,

Wayne Stenehjem  
Attorney General

jjf/pg

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).



----- Forwarded message follows -----

Date sent: Fri, 17 Oct 2008 14:06:22 -0500

Send reply to: Char Goodyear <Char.Goodyear@ndsu.edu>

From: Char Goodyear <Char.Goodyear@ndsu.edu>

Subject: SBHE opposition to Measures 1 & 2

To: [NDSU-STAFF@LISTSERV.NODAK.EDU](mailto:NDSU-STAFF@LISTSERV.NODAK.EDU)

The North Dakota State Board of Higher Education passed a motion on Oct. 8, 2008, opposing Measures 1 and 2 because it could potentially:

- oForce the North Dakota University System to increase tuition between 8 percent to 12.5 percent just to maintain the current level of services and programs at the state's universities and provide 4 percent annual salary increases.

- oDelay improvements to campus security intended to further protect students, faculty and staff in the event of an on-campus emergency.

- oEliminate some academic programs and services on all 11 campuses resulting in faculty and staff reductions, thereby extending the time to complete a degree.

- oReduce the ability of the NDSU Extension Service to address the emerging issues and needs of a strong agricultural economy. The capacity to help new value-added agriculture and entrepreneurial ventures could be diminished resulting in a reduction in rural community vitality.

- oReduce the ability of the North Dakota Agricultural Experiment Station and its Research Extension Centers to increase the economic vitality of crop and livestock production.

- oCurtail the ability to pursue emerging opportunities through the development of new agricultural technologies.

- oFurther delay building and infrastructure maintenance already in excess of \$110 million.

- oLimit student opportunities for workstudy, internships and on-the-job training activities.

- oIncrease class sizes.

More information on the SBHE position is attached.

Najla Ghazi Amundson

Media Relations Director

Office of Vice President for University Relations North Dakota State

University Old Main 204 NDSU Dept 6000 PO Box 6050 Fargo ND 58108-6050

701.231.8325

701.799.8487 (cell)

# NORTH DAKOTA UNIVERSITY SYSTEM ESTIMATED NDUS FINANCIAL IMPACT OF BALLOT MEASURES #1 AND #2

#1: Creation of a constitutional permanent oil tax trust fund. The measure limits the amount of oil tax revenue that may be deposited in the general fund to \$100 million each biennium, adjusted by the consumer price index in the future bienniums. The measure requires approval by 75 percent of the Legislative Assembly to spend money from the permanent oil tax trust fund.

#2: Reduction of individual and corporate income tax rates. The measure reduces individual income tax rates by approximately 50% and corporate income taxes by 15%.

Assumption: Passage of both measures #1 and #2 will result in a general fund revenue reduction which would essentially necessitate, at a minimum, hold-even state general fund budgets for the 09-11 biennium. As a result, the NDUS would need to absorb the cost to continue the current level of operations or raise additional revenue to cover those added costs.

	(1) 09-11 Cost to Continue, excluding salary increases 1/	(2) Assumed 4% annual salary increase 2/	(3) Total Cost to Continue with 4% Annual Salary Increase  (1) + (2)
BSC	\$ 1,702,408	\$ 1,037,825	\$ 2,740,233
LRSC	\$ 433,773	\$ 288,888	\$ 730,859
WSC	\$ 437,103	\$ 284,668	\$ 721,771
UND Main Campus	\$ 7,395,225	\$ 5,381,083	\$ 12,766,308
UND SOMHS	\$ 1,402,978	\$ 1,483,745	\$ 2,886,723
UND Total	<u>\$ 8,798,203</u>	<u>\$ 6,854,828</u>	<u>\$ 15,653,031</u>
NDSU	\$ 6,884,761	\$ 4,828,072	\$ 11,810,823
NDSCS	\$ 1,670,738	\$ 1,109,656	\$ 2,780,394
DSU	\$ 1,604,505	\$ 845,238	\$ 2,449,743
MASU	\$ 694,177	\$ 353,779	\$ 1,047,956
MISU	\$ 1,782,791	\$ 1,345,985	\$ 3,128,776
VCSU	\$ 825,957	\$ 554,202	\$ 1,380,159
MISU-BC	\$ 303,583	\$ 184,637	\$ 488,200
Subtotal	<u>\$ 25,237,969</u>	<u>\$ 17,693,776</u>	<u>\$ 42,931,745</u>
Forest Service	\$ 133,410	\$ 114,362	\$ 247,772
NDUS Office, including SITS	\$ 1,441,681	\$ 1,122,506	\$ 2,564,187
Subtotal	<u>\$ 28,813,060</u>	<u>\$ 18,930,644</u>	<u>\$ 45,743,704</u>
Extension Service	\$2,098,463	\$518,128	\$2,614,591
Main REC	\$3,017,747	\$1,369,685	\$4,387,432
Branch REC	\$1,051,909	\$371,249	\$1,423,158
NCI	\$76,078	\$46,020	\$122,098
Agronomy Seed	\$0	\$0	\$0
UGTI	\$228,888	\$25,609	\$252,595
Subtotal	<u>\$6,469,183</u>	<u>\$2,330,691</u>	<u>\$8,799,874</u>
<b>GRAND TOTAL</b>	<u><b>\$33,282,243</b></u>	<u><b>\$21,261,336</b></u>	<u><b>\$54,543,578</b></u>

1/ Includes cost to continue 08-09 salary increase, 09-11 health insurance increase at 13.5% per year, operating inflation and utilities increases

2/ SBHE 09-11 budget request includes 7% annual average salary increase; however, the level of salary increase in a hold-even budget would likely be reduced or eliminated. Annual average increases of 4% per year are used here as an example only.

March 9, 2009

SUPPORT: HB 1347

Senate Judiciary Committee

ND Senate

State Capitol

Bismarck, North Dakota 58505

Senate Nething and Members of the Senate Judiciary Committee:

My name is Robert W. Harms of Bismarck, North Dakota. I am urging your support of HB 1347, a bill which will prohibit the use of public property to support or oppose state wide or local ballot measures. Use of public funds to support or oppose a ballot measure is unfair in the political process that serves as a foundation of our political system and threatens the very fabric of our form of government. It does so, by allowing those in seats of government, whether elected officials or public employees to use the power and resources of the government to persuade the public of a particular view of a ballot measure favored by those in power and having access to the public treasury.

I will offer you a number of examples during the hearing, but attach a couple of examples that demonstrate the point:

1. The State Board of Higher Education with regard to Measures 1 and 2 during the 2008 election and
2. Bismarck School District during the 2004 election (see AG letter opinion 2004-L-55)

You needn't favor or oppose any of the examples cited to recognize the danger posed by allowing the use of public property to effect the outcome of any ballot measure, whether it be Measure #1, a local bond issue for the local courthouse or high school, or perhaps a statewide measure to restore a state agency to the control of the Governor. In each case the public good is advanced by free and open debate and discourse rather than public officials utilizing public resources to influence an election in a way that they deem best serves the public interest.

I ask for your SUPPORT for HB 1347 and would be happy to discuss the bill, its merits and implications with the Committee.

Thank you.

Robert W. Harms

## SENATE JUDICIARY COMMITTEE HB1347

Bev Nielson, North Dakota School Boards Association

NDSBA is opposed to HB1347. We do not believe that initiated measures were "inadvertently" omitted from this section of code. The Chapter is clearly written to refer to activities related to political campaigns of candidates and political party activities—not the creation of laws.

Our position is that it is the duty of elected school boards to evaluate and communicate the effects of any legislation on their school district. Initiated measures and referrals, whether state or local, have the impact of law just as legislation passed by the legislature. Because of this, school boards must be able to take a position for or against such measures if they so choose and communicate that position to its patrons. Since we are not sure that is considered "performance of a duty of a public office" as stated on lines 18 and 19 of this bill, we have grave concerns.

While HB1347 does not appear to explicitly prohibit boards from taking a position, it is unclear what they could and couldn't do to communicate that position to patrons of their district. Since the bill draft only contains the section of 16.1-10-02 to be amended, I have attached the whole Chapter so you might see the extent to which this bill could impact school boards.

For instance, in 16.1-10-02 subsection (b), the word "property" is defined in minute detail—right down to typewriters and buildings. You will also notice the language in subsection (b) was clearly written about activities related to candidates, political parties, committees, and organizations, not proposed legislation. Therein lies the problem.

- Can boards communicate their position on laws that would be created by initiated measures in the district's regular newsletter which would be sent out at no more cost than any other issue?
- Can a public forum be held on the issue in the school gymnasium? Can the board express their position at that meeting?
- Can a board direct its superintendent to attend public meetings concerning the issue? Can the superintendent express the board's position?

Boards have always known they cannot use public funds or property to endorse candidates for elective office. That is reasonable. However, when it comes to creating law, boards have an obligation to communicate the impact of passage



just as they do here during the legislative session. Initiative and referendum is simply another form of "legislative session."

These concerns became even greater when the bill was amended in the House to include "local ballot measures." Boards would be at a great disadvantage if they couldn't take and, subsequently, defend a position on a measure setting the district's mill levy, for instance. We understand that it has never been appropriate to spend public funds to buy advertisements, buttons, lawn signs, etc. but this bill goes much further and puts into question the legality of a board using a district's own newsletter, public forums, or press conferences that may occur on school property or be attended by board members or administration.

Speaking with one bill sponsor about these concerns, we were told, "That is not the intent of this legislation." We are not so sure—when subsection (a) is read in context with subsections (b) and (c).

We believe, when a piece of legislation **criminalizes** activities of an elected board, the intent and the language must be very clear! This can be difficult when a section of code, clearly written to refer to political candidate campaigns, is used to control advocacy rights of elected school boards.

We urge a Do Not Pass recommendation on HB1347. Thank you for your consideration.

## **CHAPTER 16.1-10 CORRUPT PRACTICES**

**16.1-10-01. Corrupt practice - What constitutes.** A person is guilty of corrupt practice within the meaning of this chapter if the person willfully engages in any of the following:

1. Expends any money for election purposes contrary to the provisions of this chapter.
2. Engages in any of the practices prohibited by section 12.1-14-02 or 12.1-14-03.
3. Is guilty of the use of state services or property or the services or property of a political subdivision of the state for political purposes.

**16.1-10-02. Use of state or political subdivision services or property for political purposes.**

1. No person may use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or any agency, department, bureau, board, commission, or political subdivision thereof, for any political purpose.
2. The following definitions must be used for the purposes of this section:
  - a. "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a state office or a position taken in any bona fide news story, commentary, or editorial.
  - b. "Property" includes, but is not limited to, motor vehicles, telephones, typewriters, adding machines, postage or postage meters, funds of money, and buildings. However, nothing in this section may be construed to prohibit any candidate, political party, committee, or organization from using any public building for such political meetings as may be required by law, or to prohibit such candidate, party, committee, or organization from hiring the use of any public building for any political purpose if such lease or hiring is otherwise permitted by law.
  - c. "Services" includes, but is not limited to, the use of employees during regular working hours for which such employees have not taken annual or sick leave or other compensatory leave.

**16.1-10-03. Political badge, button, or insignia at elections.** On the day of an election, no person may buy, sell, give, or provide any political badge, button, or any insignia to be worn at or about the polls on that day. No such political badge, button, or insignia may be worn at or about the polls on any election day.

**16.1-10-04. Publication of false information in political advertisements - Penalty.** A person is guilty of a class A misdemeanor if that person knowingly, or with reckless disregard for its truth or falsity, publishes any political advertisement or news release that contains any assertion, representation, or statement of fact, including information concerning a candidate's

prior public record, which is untrue, deceptive, or misleading, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure, constitutional amendment, or any other issue, question, or proposal on an election ballot, and whether the publication is by radio, television, newspaper, pamphlet, folder, display cards, signs, posters, billboard advertisements, web sites, electronic transmission, or by any other public means. This section does not apply to a newspaper, television or radio station, or other commercial medium that is not the source of the political advertisement or news release.

**16.1-10-04.1. Certain political advertisements to disclose name of sponsor - Name disclosure requirements.** Every political advertisement by newspaper, pamphlet or folder, display card, sign, poster, or billboard, or by any other similar public means, on behalf of or in opposition to any candidate for public office, designed to assist, injure, or defeat the candidate by reflecting upon the candidate's personal character or political action, must disclose on the advertisement the name of the person, as defined in section 16.1-08.1-01, or political party paying for the advertisement. If the name of a political party, association, or partnership is used, the disclaimer must also include the name of the chairman or other responsible person from the political party, association, or partnership. The name of the person or political party paying for any radio or television broadcast containing any advertising announcement for or against any candidate for public office must be announced at the close of the broadcast. If the name of a political party, association, or partnership is used, the disclaimer must also include the name of the chairman or other responsible person from the political party, association, or partnership. In every political advertisement in which the name of the person or political party paying for the advertisement is disclosed, the first and last name of any named person must be disclosed. An advertisement paid for by an individual candidate or group of candidates must disclose that the advertisement was paid for by the individual candidate or group of candidates. The first and last name or names of the candidates paying for the advertisement are not required to be disclosed. This section does not apply to campaign buttons.

**16.1-10-05. Paying owner, editor, publisher, or agent of newspaper to advocate or oppose candidate editorially prohibited.** No person may pay or give anything of value to the owner, editor, publisher, or agent of any newspaper or other periodical, or radio or television station, to induce the person to advocate editorially or to oppose any candidate for nomination or election, and no such owner, editor, publisher, or agent may accept such inducement.

**16.1-10-06. Electioneering on election day - Penalty.** Any person asking, soliciting, or in any manner trying to induce or persuade, any voter on an election day to vote or refrain from voting for any candidate or the candidates or ticket of any political party or organization, or any measure submitted to the people, is guilty of an infraction. The display upon motor vehicles of adhesive signs which are not readily removable and which promote the candidacy of any individual, any political party, or a vote upon any measure, and political advertisements promoting the candidacy of any individual, political party, or a vote upon any measure which are displayed on fixed permanent billboards, may not, however, be deemed a violation of this section.

**16.1-10-06.1. Paying for certain election-related activities prohibited.** No person may pay another person for:

1. Any loss or damage due to attendance at the polls;
2. Registering;
3. The expense of transportation to or from the polls; or
4. Personal services to be performed on the day of a caucus, primary election, or any election which tend in any way, directly or indirectly, to affect the result of such caucus or election.

The provisions of this section do not apply to the hiring of a person whose sole duty it is to act as a challenger and to watch the count of official ballots.

**16.1-10-06.2. Sale or distribution at polling place.** A person may not approach a person attempting to enter a polling place, or who is in a polling place, for the purpose of selling, soliciting for sale, advertising for sale, or distributing any merchandise, product, literature, or service. A person may not approach a person attempting to enter a polling place, who is in a polling place, or who is leaving a polling place for the purpose of gathering signatures for any reason. These prohibitions apply in any polling place or within one hundred feet [30.48 meters] from any entrance leading into a polling place on election day.

**16.1-10-07. Candidate guilty of corrupt practice to vacate nomination of office.** If any person is found guilty of any corrupt practice, the person must be punished by being deprived of the person's government job, or the person's nomination or election must be declared void, as the case may be. This section does not remove from office a person who is already in office and who has entered upon the discharge of the person's duties when such office is subject to the impeachment provisions of the Constitution of North Dakota.

**16.1-10-08. Penalty for violation of chapter.** Any person violating any provision of this chapter, for which another penalty is not specifically provided, is guilty of a class A misdemeanor.

**Senate Judiciary Committee  
Testimony on HB 1347**

**Pat Seaworth, General Counsel  
North Dakota University System  
March 9, 2009**

---

Chairman Nething and members of the House Judiciary Committee:

I appear in opposition to HB 1347 on behalf of the State Board of Higher Education and Chancellor Goetz. The Board opposes this measure because it apparently would limit the ability of Board members and ND University System officials to express support for or opposition to measures that may have a profound impact on the SBHE and NDUS institutions.

It is possible that future referred measures or constitutional amendments would directly impact the SBHE or NDUS institutions. One example is a measure that would reduce or limit state funding for the SBHE and its institutions. Another is a measure that would change the missions of NDUS institutions or require closure of one or more institutions. Members of the SBHE think that most voters would expect the SBHE to establish and advocate for its position regarding a ballot measure that would change the mission of or close a state college or university. That would not be permitted if this legislation is adopted. HB 1347 would restrict the ability of SBHE members or NDUS officials who are best able to provide pertinent information regarding a measure to explain to the voters reasons for supporting or opposing a measure that might significantly change public higher education in this state.

The SBHE asks that this Committee recommend do not pass on HB 1347.

Contact: Pat Seaworth (328-4169 or [pat.seaworth@ndus.edu](mailto:pat.seaworth@ndus.edu))

**UNOFFICIAL AMENDMENTS to ENGROSSED HOUSE BILL 1347**

- proposed by Sen. Fiebiger -

Page 1, line 1, after "A BILL" replace the remainder of the bill with "directing the Legislative Council to study the appropriate use of state or political subdivision services, property, or other resources for political purposes.

**WHEREAS**, public entities should not use public money to advertise in support of or in opposition to a statewide initiated or referred measure, a constitutional amendment or measure, or a political subdivision ballot measure;

**WHEREAS**, the citizens of North Dakota have the right to be aware of a public entity's position of a statewide initiated or referred measure, a constitutional amendment or measure, or a political subdivision ballot measure;

**WHEREAS**, public entities can be directly affected by a statewide initiated or referred measure, a constitutional amendment or measure, or a political subdivision ballot measure;

**WHEREAS**, the definition of "political purpose" in section 16.1-10.02 of the North Dakota Century Code includes activities relating to the election or nomination of a candidate for public office, and does not include activities relating to the support of or opposition to a statewide initiated or referred measure, a constitutional amendment or measure, or a political subdivision ballot measure;

**WHEREAS**, public entities may encounter incidental use of public property or other resources while stating their position on a statewide initiated or referred measure, a constitutional amendment or measure, or a political subdivision ballot measure;

**WHEREAS**, public entities have an obligation to advocate for the best interests of the citizens of North Dakota;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the appropriate use of state or political subdivision services, property, or other resources for political purposes; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly."



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12-27-20. Expenditure of public funds to influence election outcome prohibited. The state, an agency of the state, and the governing body of a county, municipality, or other political subdivision of the state may not expend or permit the expenditure of public funds for the purpose of influencing the nomination or election of any candidate, or for the petitioning of a ballot question on the ballot or the adoption or defeat of any ballot question. This section may not be construed to limit the freedom of speech of any officer or employee of the state or such political subdivisions in his or her personal capacity. This section does not prohibit the state, its agencies, or the governing body of any political subdivision of the state from presenting factual information solely for the purpose of educating the voters on a ballot question.

**Source:** SL 2007, ch 80, § 20.

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### Chapter 12-27

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**Todd Kranda**

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**From:** Todd Kranda [kranda@kelschlaw.com]  
**Sent:** Sunday, March 08, 2009 11:15 AM  
**To:** 'dnething@nd.gov'  
**Cc:** 'colafson@nd.gov'; 'tdfiebiger@nd.gov'; 'slyson@nd.gov'; 'cnelson@nd.gov'; 'macschneider@nd.gov'  
**Subject:** HB 1347 - proposed amendment  
**Attachments:** Proposed Amendment to HB 1347.pdf; SKMBT\_C35209030413230.pdf

Senator Nething –

You have a hearing scheduled in your Judiciary Committee at 9 am on Monday March 9, 2009 regarding Engrossed House Bill 1347. Unfortunately I have two other hearings that morning starting at 9:00 am and 9:15 am that I need to appear at and provide testimony on in support of two bills that I am lobbying for that clients are sponsoring and promoting so I doubt that I will be able to appear and testify on House Bill 1347. I would like to present this brief information to you and your Judiciary committee members on behalf of Missouri River Energy Services.

Missouri River Energy Services is a not-for-profit, wholesale supplier of energy-related services to 60 member municipal utilities located throughout Iowa, Minnesota, North Dakota and South Dakota. The average MRES member community has a population of about 4300 residents, with some 2300 electric meters per utility, covering 5.6 square miles, and has five employees on its utilities staff. In North Dakota, MRES currently has membership from the communities of Cavalier, Hillsboro, Lakota, Northwood, Riverdale and Valley City.

Missouri River Energy Services (MRES) has contacted me with regard to some concerns they had with Engrossed House Bill 1347. The concern expressed by MRES is that the local municipalities feel that with this bill they will not be able to inform and notify the voters of the factual information regarding any ballot measure.

In order to clarify that the bill does not affect any free speech nor limit the municipality from providing factual information on any ballot measure there was an amendment that MRES wants to suggest be considered by the Senate Judiciary committee and added to the bill. The language for this amendment was taken directly from a similar statute that exists in South Dakota.

Shown below and attached is the proposed amendment for Engrossed House Bill 1347. Also attached is a scanned copy of the South Dakota Statute (Section 12-27-20) from which this amendment was created for the similar North Dakota Statute that is being created and considered in Engrossed House Bill 1347.

While I will try to make an appearance and testify at the Senate Judiciary Committee hearing when this bill is scheduled on Monday morning I am concerned that the conflict with two other bills scheduled at the same time may cause me to miss your hearing on House Bill 1347. Also, MRES was unable to appear in the House so this proposed amendment was not considered at that time.

Please consider this information and the proposed amendment when the hearing is held and when the bill is acted upon by your Judiciary committee. I am copying the other members of your Judiciary committee with this email message and the attachments.

Thanks,  
Todd D. Kranda  
MRES



**PROPOSED AMENDMENT TO  
ENGROSSED HOUSE BILL NO. 1347**

Page 1, after line 20 insert "This section may not be construed to limit the freedom of speech of any officer or employee of the state or such political subdivisions in his or her personal capacity. This section does not prohibit the state, its agencies, or the governing body of any political subdivision of the state from presenting factual information solely for the purpose of educating the voters on a ballot question."

Renumber accordingly

**Nething, David E.**

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**From:** HarmsRbrt@aol.com  
**Sent:** Monday, March 30, 2009 2:07 PM  
**To:** Nething, David E.; Olafson, Curtis; Lyson, Stanley W.; Fiebiger, Tom D.; Nelson, Carolyn C.; Schneider, Mac J.  
**Subject:** HB 1347.....political activities bill  
**Attachments:** HB1347amendments3.09.docx

Senators Nething, Lyson, Olafson, Nelson, Fiebiger and Schneider:

I spoke with some of you last week to understand any concerns with this bill. I feel strongly about this issue, but also am trying to hear and address the concerns of others.

Accordingly, I've attached a couple of potential amendments that I would ask you to consider. They confirm that a board is free to help educate the public regarding an issue through the use of a public forum and may also take a position with respect to an issue, without violating the law.

The problem we all face is when the government as a matter of policy, is allowed to use its power to influence, through advocacy by the use of public resources.

I'd like to see the bill passed, as you know but hope you'll look at these amendments as a means of addressing concerns that I understand may exist.

Best wishes,

rh

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PROPOSED AMENDMENT TO FIRST ENGROSSMENT ENGROSSED HOUSE BILL 1347

Page 1, remove lines 18 through 20

Page 1, at line 18 insert:

**b). Political purpose does not include:**

1. activities undertaken in the performance of a duty of a state public office or a position taken in any bona fide news story, commentary, or editorial,
2. discussing or taking a position at a public meeting in support of or in opposition to a measure or proposed amendment, or
3. hosting a public forum in which opposition and support of a measure or proposed amendment is presented.

**Alternative amendment:**

Page 1, lines 8 and 9, remove "a statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure, or

Page 1, after line 20 insert a new subsection to read:

**b. Political purpose includes any activity undertaken in support of or in opposition to a statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure. The term does not include activities undertaken in the performance of a duty of a state public office or a position taken in any bona fide news story, commentary, or editorial, discussing or taking a position at a public meeting in support of or in opposition to a measure or proposed amendment, or hosting a forum in which opposition and support of a measure or proposed amendment is presented.**



# NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360

Representative Dwight Wrangham  
District 8  
301 52nd Street SE  
Bismarck, ND 58501

COMMITTEES:  
Judiciary  
Agriculture

Mr. Wayne Stenehjem, Attorney General  
Capitol Building  
600 East Boulevard  
Bismarck, North Dakota 58505

Dear Attorney General Stenehjem

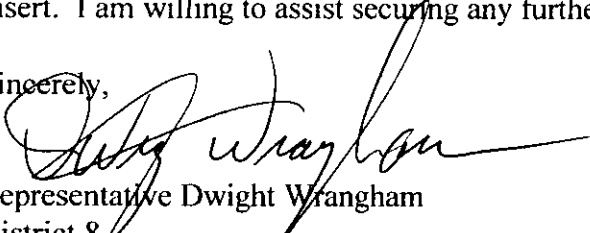
The purpose of this letter is to request an Attorney General's opinion as to the proper use of public funds by the McLean County Commission.

More specifically, I request your input on the following questions:

- 1) The McLean County Commission approved the construction of a new court house. The decision was subsequently put to a vote of the citizens. The County Commission, at public expense, placed an insert (enclosed) in the county newspaper. Was this proper use of public funds?
- 2) The voters turned down the proposal for a new courthouse. At the November general election the voters will decide on the question of renovating the present courthouse. The present McLean County courthouse has been declared an historic building. Can the Commission proceed with renovation of the present courthouse before the November vote or without first consulting with the Historic Society?

I have enclosed, for your information, a letter I received from a constituent, and a copy of the insert. I am willing to assist securing any further information you may need.

Sincerely,

  
Representative Dwight Wrangham  
District 8

06-20-02

Mrs. Dwight Wrennham:

The Committee to Save the McLean County Courthouse is requesting that you request an opinion from the Attorney General's office in regard to the publication (ad) that was inserted in the Leader-News in regard to the public voting for construction of a new Courthouse. Is this legal?

Also an opinion as to whether the Commissioners can begin remodeling the roof, etc. until the November election? Should they be contacting the Historical Society?

Caroline S. Kerymann  
Committee to Save the  
McLean County Courthouse



An artist's conception of the new courthouse shows a frontal view. The building design is single story which will provide adequate accessibility for our citizens to all sections of the building.

## **McLean County**

### **Courthouse Construction Vote**

#### **June 11, 2002**

A Message from the County Commission

#### **To the Voters of McLean County:**

The McLean County Board of Commissioners have spent a considerable amount of time and effort in determining what direction county government will take in the coming decades. The existing county courthouse is in need of major renovation to meet health and safety needs of employees as well as disabled accessibility by all of our constituents.

The commission took the position that a renovation of the existing building, estimated to cost nearly \$2.9 million, would not meet the county's long term needs for disabled accessibility and safety and well being of our employees and constituents. In addition, a complete renovation of the courthouse would require relocation to another site during the work. A renovation may prolong the use of the existing courthouse but would do little to improve services or operation of county government.

The magnitude of the issue of new vs. renovation is great and there are many opinions and views being expressed. Our hope in providing this publication is to give you the voters the information you need to make an informed choice on the question of approving new construction which is on the June 11, 2002 Primary Election Ballot.

#### **McLean County Commission**

MarlIn Leidholm, Chairman  
Ronald Krebsbach, Member  
Michael Boe, Member

# The VOTE

## What has to happen for this project to be approved?

A majority of the voters in McLean County must vote yes for approval of the question to build a new county courthouse as well as to approve levying of five (5) mills annually for up to six (6) years for a building fund which will be combined with a Coal Impact Trust Fund loan of \$1.5 million and \$1.1 million in county funds to pay for the project.

## What will a YES vote mean?

The county will construct a new single level courthouse and law enforcement center which will be disabled accessible, utilize the most modern technology and provide a safe and healthy working environment for county employees and the public.

The new building is designed to establish realistic space needs for departments which will aid in providing maximum efficiency in office operations if and when consolidation of any offices or departments becomes necessary.

A building fund tax levy of five mills for a period up to six years would be used in conjunction with a \$1.5 million loan and \$1.1 million in county funds to construct a new 30,000 square feet plus building that would include both government office as well as court and law enforcement facilities.

## What will a NO vote mean?

If a "No" vote prevails on June 11 a second vote to approve major renovation of the existing courthouse will be placed on the November 5, 2002, General Election Ballot. The cost of that renovation would be handled in the same manner as the new construction with the renovation costs expected to approach those of new construction.

The county would likely lose the opportunity to take advantage of current low interest rates on bonds.

## **VOTING INFORMATION**

*How will the courthouse ballot be stated?*

*Shall the McLean County Board of Commissioners make an extraordinary expenditure of \$3,298,842.00 in McLean County funds for the purpose of constructing a new McLean County Courthouse and law enforcement center and levy an annual tax, in addition to the usual taxes required to be levied, of five (5) mills on taxable property in McLean County for six (6) consecutive years beginning January 1, 2003 and ending December 31, 2008, sufficient to raise the sum of at least \$660,000.00 to establish a building fund to pay for a portion of the appropriation or liability incurred?*

YES ( ) NO ( )

## **How do I obtain an Absentee Ballot?**

Absentee ballots for this special ballot are obtainable in the same manner as an absentee ballot for the June 11 Primary election since the question is a part of the primary ballot. Individuals wishing to receive an absentee ballot must submit an application for an absentee ballot to the office of the **McLean County Auditor, P.O. Box 1108, Washburn, ND 58577**. Applications may be secured by writing the above address, printing from the following web address: <http://www.visitmcleancounty.com/officials/sfn51468.pdf> or calling the County Auditor's office at (701) 462-8541.

Each individual must complete his/her own application and personally sign it. Upon receipt by the County Auditor a ballot will be mailed to the voter, complete with a return envelope. Once the voter has completed his/her ballot it is placed in the return envelope and the form on the reverse of the envelope must be completed, including signing by the voter. Since the ballot application is attached to the completed ballot envelope when it arrives at the county auditor's office, voter signatures on the application and the ballot envelope must match or the ballot will be declared void and WILL NOT be counted.

**VOTER'S NOTE:** Persons intending to use absentee ballots should request application early to insure delivery of the ballot. **No ballots will be mailed after 4:00 p.m. Friday, June 7, 2002 since we cannot guarantee arrival in time to meet the Monday, June 10, 2002-deadline for postmarking ballots. Any ballots bearing a post-mark of June 11, 2002 or later will not be counted.**

# **Public Information Meeting and Building Tour**

*Tuesday, June 4, from 2:00 p.m. to 9:00 p.m.*

*Courtroom, County Courthouse*

***VOTE on Tuesday, June 11, 2002***

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## ***The Cost***

Cost estimates prepared by Hulsing and Associates Architects, Dickinson, for the construction of a new courthouse which would include 25,223 square feet for offices and court system and 3,833 square feet for a law enforcement center is \$3,206,842.00.

There are some cost items, such as site preparation and landscaping, which the county will handle with its own personnel and equipment, which will serve to reduce the overall project costs.

## ***Funding Sources***

The county proposes to fund the construction of a \$3.2 million courthouse and law enforcement center from the following sources: A \$1.1 million county building fund and cash reserve, a \$1.5 million loan from the State Energy Impact Trust Fund and \$660,000 in bonds which would be repaid from a six-year mill levy of up to five mills annually.

Since interest rates are at their lowest in many years, the county can expect an excellent rate on any bonds issued. The interest rate on the Energy Impact Trust Fund loan is set at six (6) percent annually and can be carried for up to 20 years.

## ***Operating Costs***

Operating costs of a new building will be a major factor for the county. The current building was remodeled in 1982 but the existing heating and cooling systems are in need of major replacement. The county is giving serious consideration to installation of a ground source heat pump system which uses a series of wells to provide for building heating and cooling. While the initial cost is somewhat higher than

conventional systems, the cost is quickly recouped.

Given the huge increase in natural gas prices during the winter of 2001-2002 and the uncertainty of future rates, the county believes that alternate energy sources are a wise choice for new or renovated buildings.

A new building will be constructed to handle current and future technology needs and will increase state of the art safety features, including fire alarms and fire protection.

It is certain that energy costs will decrease with a newer energy efficient system.

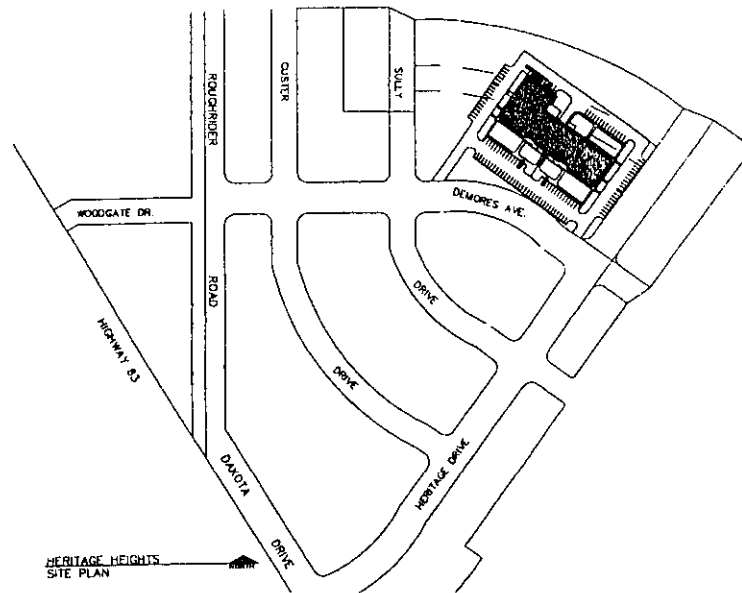
## ***The Benefits***

A new building will allow various county offices to be located in a manner that will give constituents one-stop service. The auditor, treasurer and tax directors' offices will be directly linked in a common area. Social Services and district health facilities will share adjacent space. The court system, Judge, State's Attorney and Clerk of District Court will all occupy a singular area, which will be directly accessed by the county sheriff's department in movement of prisoners.

The operation of county government in a ground level building will eliminate a lengthy problem with disabled accessibility which exists in the current building and do so without the installation of a costly elevator.



# Office/Department Layout of New Courthouse

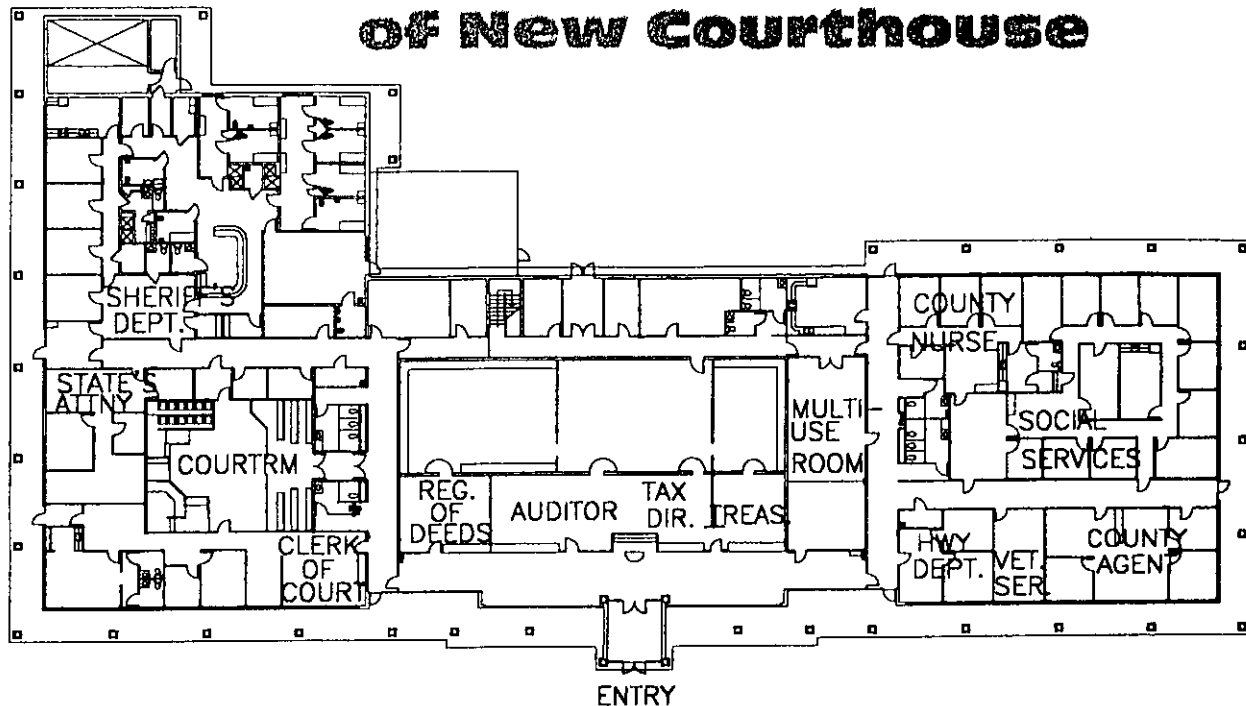


The floor plan for the proposed McLean County Courthouse was created in a manner that links together the various departments of government. The right side portion of the design plan houses health and social services agencies as well as county extension and highway department offices. The middle section includes auditor, treasurer, tax director and county recorder and the left side section includes the court system and law enforcement center. Each of the three sections is designed to include agencies or departments which have common services and/or operations.

What will happen to the old courthouse if voters approve a new building? McLean County will continue efforts to find a use for the old courthouse but most of the problems which currently face the county will also face any new tenant. Without costly and major expenditures for repairs and renovation the exiting building will face an uncertain future. County commissioners have indicated they do not intend to spend any money on maintaining the old courthouse if it is vacated. Instead they would follow the criteria that the State historical Society is using in handling of the historic original Stutsman County Courthouse at Jamestown, disconnecting heat and electricity, securing the building from unauthorized entry and maintaining the grounds surrounding the building.

**NOTE:** This publication which has been prepared and paid for by McLean County is an effort to provide information to the voters of the county on the proposed construction of a new county courthouse. Undoubtedly there are questions and issues which may not have been addressed in this publication because of space constraints. If you have any questions or comments on the courthouse construction issue, please contact a member of the McLean County Board of Commissioners.

## Site Location/Model of New Courthouse



### *McLean County Courthouse Floor Plan*

The site location of the proposed courthouse is within county owned property in the Heritage Heights Pioneer Addition in northwest Washburn. The location is adjacent to a residential area and provides ample room for parking and landscaped grounds surrounding the building.

## **A QUICK LOOK AT KEY INFORMATION**

### **The Need -----**

McLean County must provide a handicapped accessible courthouse to the public.

### **The Proposal -----**

Construct a new courthouse and law enforcement center to carry county government into the 21<sup>st</sup> century.

### **The Benefits -----**

The Court system and law enforcement facilities would be under one roof.

Employees would have improved facilities to better support 21<sup>st</sup> century services and technology.

### **The Financing -----**

The estimated cost of new construction is \$3.2 million.

County Building Funds and Cash Reserves would provide \$1.1 million.

A loan from the Coal Impact Trust Funds would provide \$1.5 million.

Approval of a building fund mill levy would provide \$660,000.

### **The Tax Impact -----**

Approval of the building fund mill levy would increase taxes on a \$50,000 home by \$11.25 or less than \$1 per month. On a \$75,000 home the tax increase would be \$16.88 annually. On a quarter of farmland valued at \$30,000 the increase would be \$7.50 annually. On a quarter of farmland valued at \$35,000 the increase would be \$8.75 annually.

## **Costs - New Construction vs. Renovation**

There has been considerable discussion on the costs of new construction versus renovation of the existing courthouse. A group dedicated to retention of the existing building worked with the State Historical Society in hiring a historical preservation architect, Mr. Royce Yeater. Yeater conducted a review of the existing courthouse in an effort to determine what work would be required for a renovation, as well as compiling costs estimates for the work.

Mr. Yeater stated that for the existing building to remain functional throughout much of the next century a complete renovation would be required. He further stated that such work would require major changes in the interior of the building, which would amount to essentially gutting the structure and replacing all of the original designs and features of the building which had been removed in previous remodeling and repair efforts.

This type of renovation, coupled with safety and fire code compliance would serve to change the interior of the building. The open stairways, viewed by preservationists as a unique feature of the building, would be removed since they do not meet existing fire codes.

The Yeater report, as well as one by Hulsing and Associates, the firm hired by the county to design a new building, indicate that it is impossible to establish a firm cost figure for renovation since there are unknown factors that could exist. These costs would not be uncovered until the start of work and could drive up costs significantly.

The Yeater report established a renovation cost estimate of \$2.46 million for work which would include renovation of the existing courthouse and construction of a jail/law enforcement center addition. That figure did not include office relocation costs which would be required during the construction work.

Construction Analysis & Management (CAM) Inc., Fridley, MN was hired by the county to serve as construction manager for the proposed new courthouse. CAM was asked to review the Yeater report and figures and to include relocation costs as well as any other items which they felt may have been missed. The CAM cost estimate for renovation and construction of a new law enforcement facility totaled \$2.9 million.

### ***Renovation Means Change***

Yeater's report and subsequent discussions with him indicate that some sections of the existing building will be gutted and redone to initial construction designs.

A major factor in any renovation project will be the need to relocate county offices to another site during the construction work. It was advanced that offices could continue to operate during the work but because of the large scale efforts required that was ruled out. As a result the county would need to find other sites from which to conduct business during any renovation work. This could last for as long as one year.

Any relocation adds two more costs, the first is a moving cost and secondly there would be a cost for space rental, if enough space can be found. The next page indicates the renovation costs posed by the Yeater Report and CAM report.

***See Next Page For breakdown***

# **RENOVATION COST COMPARISONS**

<i>Project Item</i>	<i>Yeater Estimate</i>	<i>CAM Estimate</i>
Office Renovations	\$880,000.00	\$989,924.09
Mechanical Costs	\$284,000.00	\$279,008.05
Electrical Costs	\$122,000.00	\$213,448.00
Law Enforcement Center Addition	\$816,000.00	\$769,149.47 (A) \$951,805.99 (B)

**(A) Jail would be constructed as separate facility**

**(B) Jail would be attached to the existing courthouse**

Site Development	\$60,000.00	
Markups	\$154,000.00	
Contingency	\$144,000.00	\$148,238.01
Architects Fees	Not Given (1)	\$116,996.85
Construction Manager	Not Figured (1)	\$40,765.45
Relocation Costs	Not Given (1)	\$36,000.00
Moving Expenses	None Given (1)	\$6,000.00
New Roof 1963 Addition	Not Figured (1)	\$59,670.00
<b>TOTAL</b>	<b>\$2,460,000.00</b>	<b>\$2,659,199.92 (A)</b>
	<b>\$2,719,431.00 (C)</b>	<b>\$2,841,856.44 (B)</b>

**(A) Total estimate using construction of unattached jail**

**(B) Total estimate using construction of jail attached to existing courthouse**

**(C) Total Yeater estimate adding CAM cost figures for those not included (1).**

In order to compare the Yeater and CAM estimates on an equal basis, items marked (1) in the Yeater Column were included in amounts identical to CAM figures and added to the Yeater estimate total to get the comparable estimate totals in CAM (B) total.

The basic difference between new construction and renovation of the existing building is linked to the fact that the new construction costs will be locked into a total overall bid price. In a renovation project, costs can be increased by need to include repairs and materials that were not included in the overall bid but discovered as work progressed. There will be no need to relocate government operations to another site when dealing with new construction. Once the new building is completed offices and departments would merely move from the existing location to the new site.

Today's technology, especially computers, is not compatible with the dust and debris caused by construction work. Employees cannot be subjected to those same elements which arise when employees and operations are forced to remain in a building during renovation.

# ***The Tax Impact***

## **New Construction or Renovation**

The debate concerning new construction versus renovation of the existing building has gone on for a number of years and all the time costs of either solution have escalated. There was a time when it appeared the county could handle either project without any tax increases but that has passed. Whether or not voters select new construction at the June 11 Primary or renovation of the existing building at a future election, the fact remains that a building fund mill levy will be required to help fund either project.

The ballot question seeks approval for a mill levy of up to five (5) mills for a period of six (6) years. Based on the current county valuation of \$22 million plus, one mill would generate about \$22,000 annually or five mills generating about \$110,000 annually.

This is a favorable time for a building project for several reasons. First, interest rates are very low for selling bonds, which will result in the county paying less interest over the repayment period. Secondly, the county's financial position is the best in nearly a decade, despite having the second lowest consolidated tax levy in the state.

North Dakota counties are entering an era of decisions. There is a concerted effort to reduce the number of counties in the state in an effort to improve efficiency of government and decrease costs. This is being accomplished in part by counties combining existing operations and departments. In the future those counties which have positioned themselves with modern technology-based buildings and operations will be at the head of the list in providing a base for county consolidation. McLean County wants to place itself in such a position.

### **Construction Timeline**

If the voters approve the mill levy and question of new construction, the county would begin immediate steps to call for bids for a new courthouse. Opening of bids could be as early as August 2002. Once bids have been opened and reviewed, the Board of Commissioners would determine if available funding would meet bid figures. If sufficient funding is available and bids awarded, construction would likely start in early fall.

Working throughout the fall and winter the contractor would be expected to complete the building within one year or October 2003. At that time the present building would be vacated and all government operations moved to the new building.

All times are tentative and subject to weather and material availability.

### **Questions**

Voters will have an opportunity to pose questions regarding the proposed new building at a public meeting planned for June 4. At that time County Commissioners, architects, construction managers and bond attorneys for the project will be present to answer questions.

Information to be presented will include space needs, future operations, building costs, interest rates, and building design.

**YOU HAVE A STAKE IN  
McLean County's Future  
VOTE JUNE 11, 2002**



Wayne Stenehjem  
ATTORNEY GENERAL

STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL  
600 E BOULEVARD AVE DEPT 125  
BISMARCK, ND 58505-0040  
(701) 328-2210 FAX (701) 328-2226

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LETTER OPINION  
2002-L-61

October 25, 2002

The Honorable Dwight Wrangham  
House of Representatives District 8  
301 52nd St SE  
Bismarck, ND 58501-8604

Dear Representative Wrangham:

Thank you for your letter requesting my opinion on several issues relating to the McLean County Courthouse. You first ask whether the Board of County Commissioners (Board) properly used public funds in publishing an eight page newspaper insert containing information regarding a pending vote on whether to approve the construction of a new courthouse. The vote was required by N.D.C.C. § 11-11-18 because the Board proposed to make an "extraordinary outlay of money" to construct the new courthouse. See 2001 N.D. Op. Att'y Gen. L-48 and 2001 N.D. Op. Att'y Gen. L-22 (copies enclosed) for a discussion of the factual and legal issues surrounding the requirement of the vote.

"In North Dakota, counties are creatures of the constitution and may speak and act only in the manner and on the matters prescribed by the Legislature in statutes enacted pursuant to constitutional authority." County of Stutsman v. State Historical Soc'y, 371 N.W.2d 321, 329 (N.D. 1985). There is no statute that specifically allows a county to issue a pre-election statement regarding issues on the ballot. By the same token, the expenditure of public funds did not technically violate the prohibition found in N.D.C.C. § 16.1-10-02(1) against using county property or services for a "political purpose." Subdivision 16.1-10-02(2)(a), N.D.C.C., defines "political purpose" to mean "any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office . . . but does not include activities undertaken in the performance of a duty of state or political subdivision office."

While this office has suggested in prior opinions that certain state-wide officeholders may provide information to voters regarding specified election issues, those opinions do not apply to situations such as the one at issue here, where elected officials of a political

subdivision prepare and distribute a newspaper insert regarding a ballot issue at taxpayer expense.<sup>1</sup>

The North Dakota Supreme Court has not passed on this issue, but the "weight of authority denies public officials the power to spend public moneys to persuade the voters to accept a position . . . preferred by the public servants." 6 Antieau on Local Government Law § 86.11 (2d ed. 2002). Courts in other jurisdictions have held that political subdivisions may not expend public funds for the purpose of influencing the result of an election issue. Porter v. Tiffany, 502 P.2d 1385 (Or. App. Ct. 1972) (bond issue and initiated measure); Citizens to Protect Public Funds v. Board of Education, 98 A.2d 673, 677-78 (N.J. 1953) (school bond issue); Elsenu v. Chicago, 165 N.E. 129 (Ill. 1929) (municipal bond issue); Mines v. Del Valle, 201 Cal. 273, 257 Pac. 530 (1927) (public utility bond issue). See also 1988 S.D. Op. Att'y Gen. 225 (concluding political subdivisions may inform voters regarding an election measure but may not advocate a position on the measure).

Citizens is instructive regarding the permissible expenditures by public bodies relating to election issues. In Citizens a school bond referendum was at issue and a local school board authorized funds for printing an 18-page booklet. The booklet contained not only facts regarding school demographics, architectural sketches, the costs and tax impact, but it urged a yes vote and listed negative consequences of a no vote.

Justice William Brennan, (later United States Supreme Court Justice) noted that a fair implication of the New Jersey law allowed the board to spend some funds in an informational role incident to the board's duty to build and maintain schools. Id. at 676. But, Justice Brennan stated,

[t]he public funds entrusted to [a political subdivision] belong equally to the proponents and opponents of [a] proposition, and the use of the funds to finance not only the presentation of facts merely but also arguments to persuade the voters that only one side has merit, gives the dissenters just cause for complaint. The expenditure then is not within the implied power and is not lawful in the absence of express authority from the Legislature.

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<sup>1</sup> 1996 N.D. Op. Att'y Gen. L-107 dealt with the question of the use of a city's economic development fund to sponsor advertisements promoting a state-wide initiated measure that affected the city. To the extent that opinion states that there is a direct correlation between lobbying activities, which are expressly authorized by statute for representatives of political subdivisions, and expenditures for ballot measures, which are not specifically authorized by statute, that opinion is overruled. Nonetheless, the question presented in that opinion involved expenditures from an economic development fund by a home rule city which are not directly relevant to the question involved here, since McLean County is not a home rule county and the question does not concern the propriety of expenditures from an economic development fund.

Citizens, 98 A.2d at 677-78. Justice Brennan concluded that the gist of the booklet was to "advocate one side only" without affording the dissenters the opportunity by means of that financed medium to present their side." Id. at 677. "It is the expenditure of public funds in support of one side only in a manner which gives the dissenters no opportunity to present their side which is beyond the pale." Id. at 677-78. Brennan observed that a public body is not restrained from seeking approval of its judgment but the dissenter's views must be accommodated. Id.

Likewise, in Stanson v. Mott, 551 P.2d 1, 17 Cal. 3d 206 (1976), the California Supreme Court concluded a state official lacked statutory authority to expend public funds to support state bond issues for enhancement of state and local recreational facilities. The court in Stanson explained that "in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign." Id. at 209-10.

Stanson also drew a distinction between lobbying regarding legislative proposals to implement policies of a public entity and election campaigning. The court explained that legislative lobbying by a public entity was authorized and is inimical to the legislative process, whereas use of public funds to influence the resolution of issues to be decided by a public vote is a "threat to the integrity of the electoral process." Id. at 218. Stanson noted that state law permitted the dissemination of information regarding the state's long range recreational needs and plans to meet such needs and that the agency had implied authority to provide the public with a fair representation of relevant information. Id. at 220-21.

Balance and fair play are the theme of the New Jersey and California cases the court observed in Palm Beach County v. Hudspeth, 540 So.2d 147 (Fla. Dist. Ct. App. 1989). In passing on the county's expenditure of funds to promote passage of a local health care act, the court advised that "[w]hile the court not only may but should allocate tax dollars to educate the electorate on the purpose and essential ramifications of referendum items, it must do so fairly and impartially." Id. at 154. The Florida court explained that the "appropriate function of government in connection with an issue placed before the electorate is to enlighten, NOT proselytize." Id. at 154 (emphasis in original).

The newspaper insert regarding the McLean County Courthouse, while professing to provide voters information about whether to approve construction of a new courthouse, cast the alternative, renovation of the existing courthouse, in a negative light. The insert stated that renovation would not meet the needs of the county or the disabled and would "do little to improve services or operation of county government." It advised that the county "would likely lose the opportunity to take advantage of current low interest rates on bonds." The insert stated the cost and tax impact of a new building but provided no comparable information regarding renovation. The insert emphasized the



October 25, 2002

Page 4

uncertain nature of a cost estimate for the renovation and the expense of relocation during remodeling. It also suggested equipment and employees would be adversely affected by dust resulting from renovation work. The advertisement suggests there is a "concerted effort to reduce the number of counties in the state," and goes on to conclude that, "[i]n the future those counties which have positioned themselves with modern technology-based buildings and operations will be at the head of the list in providing a base for county consolidation."

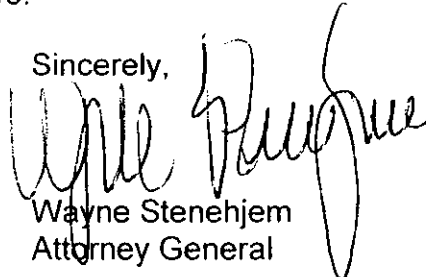
This office will not attempt to deliver an opinion that a minor factual variation might render incorrect. 2002 N.D. Op. Att'y Gen. L-07. In the question you present, however, there are no factual variations to consider, as the newspaper insert you provided contains all the facts that are necessary for a determination of the question.

Although a fact-finder conceivably could reach a contrary conclusion, it is apparent to me that no fair minded reading of the newspaper insert could lead to a conclusion other than that the overall intent and purpose of the newspaper insert was to promote passage of the bond issue, and not to provide a fair and balanced presentation of the issues before the voters. In my opinion the newspaper insert went beyond a fair presentation of facts to advocacy by the county for passage of the bond issue for a new courthouse. The expenditure of public funds for the newspaper insert in such a manner is inappropriate and unlawful.

You also ask whether the Board can renovate the roof of the court house before a November vote to renovate the courthouse without first consulting with the Historical Society.

As I pointed out in 2001 N.D. Op. Att'y Gen. L-48, the State Historical Board has broad power under N.D.C.C. § 55-02-07 to regulate the disposition and maintenance of historic sites. McLean County is required under section 55-02-07 to follow the State Historical Board's "direction in protecting the courthouse." Id. A member of my staff checked with the Historical Society Architectural Project Manager regarding the status of courthouse maintenance. He, together with the director of the Society, has been working with the Board since June regarding maintenance and preservation plans. He explained that the roof work is a matter of preservation. Thus, the Board is in compliance with 2001 N.D. Op. Att'y Gen. L-48.

Sincerely,



Wayne Stenehjem  
Attorney General

sam/tam/vkk  
Enclosures