

2011 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2327

2011 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veteran's Affairs Committee
Missouri River Room, State Capitol

SB 2327
February 4, 2011
14015

☐ Conference Committee

Committee Clerk Signature

Katie Oliver

Explanation or reason for introduction of bill/resolution:

Relating to the use of state or political subdivision services or property for political purposes; and to provide a penalty.

Minutes:

Testimony Attached

Chairman Dever called the committee to order and roll was taken with all members present.

Chairman Dever: District 32 in Bismarck. It came to provide that government dollars cannot be used to advocate for or against a constitutional amendment. It was the 200 version in the last session the bill was amended in the house, passed in the house went to the senate, amended in the senate and passed then went to conference committee and untimely failed. It is a matter of when it becomes advocacy.

Senator Nelson: Why would a political subdivision bring a measure forward if they weren't advocating for it?

Chairman Dever: I am sure we will talk about that.

Dustin Gawrylow: North Dakota Taxpayers Association. See attached testimony #1.

Chairman Dever: Thoughts on Senator Nelson question?

Dustin Gawrylow: I would say that in a lot of cases educating it the facts. There shouldn't be any city telling the citizens how to vote. It is a far cry from advocating it; taxpayers shouldn't be fighting their own money. Even if it passes the minority of the voters has had the tax dollars used against their interest and that is just morally objectionable.

Senator Nelson: If something comes out of city council 5-1 they are obviously for it.

Dustin Gawrylow: I don't think that taking a vote on the issue would be advocating one way or another or sending out info with anything other than the plain facts. It is an issue about taxpayers having their tax dollars used against them.

Chairman Dever: I wonder if the last sentence of the bill addresses that.

Senator Nelson: A commentary or an editorial could be very political

Chairman Dever: They can say whatever they want but it is a matter of

Dustin Gawrylow: It's when public dollars are being used for that. If the city runs a full page add

Senator Berry: What brought this forth?

Dustin Gawrylow: At the state level, in 2008 Measure 2 the university system had emails going around and let their employees use state resources to advocate for this measure.

Sandy Clark: North Dakota Farm Bureau. As was indicated this did happen a few years ago, we had public property that had a billboard on it and we don't think that it should happen. Under current law government property or services should not be used for advocacy. Using taxpayer dollars to campaign or persuade people is not an effective use of government time.

Senator Cook: in relation to the amendments that were provided by

Sandy Clark: I don't see a problem with this. This happens every year during the session. Every government agency is lobbying in some form or another and using government resources to do so.

Robert Harmes: I am here on my own behalf. I am looking at the amendments that Senator Cook raised. Current law says that you can't use public resources for political purposes. But you can use public resources to educate the public. The amendment would confirm the Attorney General's opinion that you can educate the public. In 1989 Governor Sinner at the time and Senator Lipps flew around the state of North Dakota trying to tell the public about the impact of the 1989 referrals. Bismarck school board within the last few years took to advocating to lift the cap on the mill levy. Again, they can educate the public but they were doing so to sway their vote. The law says that you can't use it for political purposes but you can use it to educate; for instance I see the potential for an agency to bring info before the legislature and it fails. They could then use state resources to get a measure passed and do so under the veil of educating the public. If there is a bona fide interest in educating the public then there are ways to genuinely educate the public: have both sides be present and state their case

Senator Cook: Every fall before an election we as educators get a memo from Legislative Council of all of the measures that are on the ballot; I have found that memo to be the greatest tool that I could have had as I would go door to door and people would ask me about initiated measures or measures on the ballot. As the memo was produced with state money should it be illegal?

Robert Harmes: No, I think that the memo is an appropriate use of public funds and in the legislative arena have never seen the Legislative Council get involved in the process; I feel that is a fair point in educating the public but that is the difficulty that we have. This is more geared toward state officials, agencies and elected officials.

Senator Cook: In 1997 I tried to get the names and addresses of our state universities removed from the state constitution. It passed the legislature and went to a vote of the people and those who were opposed to it were able to raise considerable money from the private sector to defeat it and we could do nothing. Now, during the course of the time 2 legislators went into the Heritage center and had a debate that was aired on the radio. It was held in a state facility and neither one of the legislators got paid. Should it be legal to use state property to conduct a debate?

Robert Harmes: We worked on this bill last session and we got it pretty much through but failed in conference committee. The legislature and relevant committees that worked on this in a lot of detail left with this language and I think that it serves the purpose. I think that would be an example of improving the bill. There is a de minimis rule but it is when you take the next step and start using staff time and state resources to achieve these things. This is an important issue and we may run into some snags but the idea that we can have school boards and state agencies in the name of educating the public and they are in reality they are advocating.

Keith Magnuson: North Dakota League of Cities. We are here in opposition to the bill as it is drafted. When you start including political subdivisions ballot measures things get hard. It is something that is ripe for complaint and litigation; I know that Chief Justice Vandewall can use a picture of himself that was taken in the former Supreme Court and that was considered de minimis. But between that what does educate mean? The term educate is just ripe for complaint because everyone has different views. The whole subject sounds good, but how do you legislate it?

Bill Wocken: City Administrator for the City of Bismarck. See attached amendment #2. There is a lot of interpretation there. If we simply put in the bill the language that I am suggesting it will clear up the potential for objection.

Senator Berry: At what point is it factual vs. advocacy.

Bill Wocken: I am not sure that it is an easy call, in the end you have see if you were educating or advocating to someone who might not have the same opinion as you. In the end we are not always going to agree. I think that it becomes a matter of interpretation. It will be hard to build a collaborative body. I would foresee legal issues and lawsuits stemming from this.

Vice Chairman Sorvaag: I see it as 3 different areas: spending of public money, spending of staff time, the political person usually has always taken a side. How do you separate staff from the elected official? How do you keep the staff from advocating said issue?

Bill Wocken: I don't have language in mind to make that separation.

Chairman Dever: If the measure fails as it relates to the smoking ban. No one is going to argue if it is true or not.

Bill Wocken: That is a good example. Referrals are not usually something that we take into account when thinking about these things.

Chairman Dever: Sometimes it is a referral of a measure and yes follows the council and the no doesn't.

Bev Nelson: School Boards Association. I have a bigger concern with the operation of the board itself and what you consider performance of duty. School boards may talk about things facing their district and that is part of their duty, usually things happening in or on school property; if we are using public property to advocate a position or if we can say that we doing our duty. I am concerned with the board's ability to do their job; their job is protecting the district and providing the services necessary to educate the kids. Data is not knowledge and you are not educating people you are just spitting out facts. I would assume that Mr. Harnes would think that is as advocating. I don't know if everything we do is supported by the taxpayers. I have a problem with educating and if you take educating out where are they going to get their information from. If people want that info we need to be able to put it out there and there needs to be rational behind it. I think that it is like so many things if you like it they will call it education and if they don't like it they will call it advocacy.

Vice Chairman Sorvaag: Doesn't line 17 cover what you are talking about.

Bev Nelson: I think that there might be opinions on what the board's duties are. I think that part of their job is to know what the ramifications are.

Senator Cook: You require school boards to print minuets in the paper? Can they do so in a quarter page add?

Bev Nelson: If we did that there are those who could say that we are advocating.

Chairman Dever: During the session we get updates from the superintendant and we get those from their meetings and they come from the meetings but that doesn't count. There are policies in place about using school computer systems do that. There is somewhere in law that talks about using it for state purposes. I think this section as you read it was clearly intended for political candidates and I see a difference between giving money to a campaign and advocating. Once it is on the ballot it is up to the people and should we allow advocacy at that level.

Jim Silrum: Deputy Secretary of State. The definition of political purpose is also found in the campaign finance chapter of 16.108.101. This bill currently addresses what's in the corrupt practices chapter but does not address what is in the campaign finance chapter of the elections title.

Chairman Dever: Line 7-12 starting on line 13-14 political purpose; does that make it separate from the top part of the paragraph?

Jim Silrum: It is our understanding to this point that they are all related and the explanation that is given on line 14 expands on what is written on line 7-10.

Al Jager: Secretary of State. If you are going to change the definition in 1 area you need to change it in all areas.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veteran's Affairs Committee
Missouri River Room, State Capitol

SB 2327
February 11, 2011
14444

☐ Conference Committee

Committee Clerk Signature

Kate Oliver

Explanation or reason for introduction of bill/resolution:

Relating to the use of state or political subdivision services or property for political purposes; and to provide a penalty.

Minutes:

No testimony attached.

Senator Cook: Is this bill saying that if we had a constitutional amendment bill before the legislature that political subdivisions could not testify?

Chairman Dever: I think that the intent of the bill would be for after it is on the ballot.

Senator Cook: Can a political subdivision hire a lobbyist?

Chairman Dever: Well they pay dues to an association that does.

Senator Cook: The City of Fargo has their own paid lobbyist.

Chairman Dever: I think that the amendments that I am seeing are saying the same thing.

A motion for a do not pass was made by Senator Nelson with a second by Senator Marcellais there was no further discussion and the motion failed with a 2-5 vote. A motion was then made by Senator Cook to adopt the amendments that Bill Wocken had provided to the committee with a second by Senator Berry, roll was taken and the motion passed 5-2. A motion for a do pass amended was made by Senator Cook with a second by Senator Schaible, there was no further discussion and the motion passed 5-2 with Chairman Dever carrying the bill to the Senate floor.

Date: 2-11-11
Roll Call Vote #: 7

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2327

Senate Government and Veteran's Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Nelson

Seconded By Marcellais

Senator	Yes	No	Senator	Yes	No
Chairman Dever		X	Senator Marcellais	X	
Vice Chairman Sorvaag		X	Senator Nelson	X	
Senator Barry		V			
Senator Cook		X			
Senator Schaible		X			

Total (Yes) 2 No 5

Absent _____

Floor Assignment _____

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

February 11, 2011

93
2-11-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2327

Page 1, line 18, remove the overstrike over "state"

Page 1, line 18, overstrike "in any bona"

Page 1, line 19, overstrike "fide news story, commentary, or editorial" and insert immediately thereafter "by a public official with no expenditure of public funds or resources. This section may not limit the freedom of speech of any officer or employee of the state or a political subdivision. This section does not prohibit a public official, the state or any agency of the state, or the governing body of a political subdivision from presenting factual information solely for the purpose of educating the voters on a ballot question"

Renumber accordingly

Date: 2/11/11
Roll Call Vote #: 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2327

Senate Government and Veteran's Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken More Amendments

Motion Made By Cook Seconded By Benny

Senator	Yes	No	Senator	Yes	No
Chairman Dever	X		Senator Marcellais		X
Vice Chairman Sorvaag		X	Senator Nelson	X	
Senator Barry	X				
Senator Cook	X				
Senator Schaible	X				

Total (Yes) 5 No 2

Absent _____

Floor Assignment _____

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

Date: 2-11-11
Roll Call Vote #: 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2327

Senate Government and Veteran's Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken As Pass as Amended

Motion Made By Cook Seconded By Schaible

Senator	Yes	No	Senator	Yes	No
Chairman Dever	X		Senator Marcellais		X
Vice Chairman Sorvaag	X		Senator Nelson		X
Senator Barry	X				
Senator Cook	V				
Senator Schaible	X				

Total (Yes) 5 No 2

Absent _____

Floor Assignment Dever

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

REPORT OF STANDING COMMITTEE

SB 2327: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2327 was placed on the Sixth order on the calendar.

Page 1, line 18, remove the overstrike over "state"

Page 1, line 18, overstrike "in any bona"

Page 1, line 19, overstrike "fide news story, commentary, or editorial" and insert immediately thereafter "by a public official with no expenditure of public funds or resources. This section may not limit the freedom of speech of any officer or employee of the state or a political subdivision. This section does not prohibit a public official, the state or any agency of the state, or the governing body of a political subdivision from presenting factual information solely for the purpose of educating the voters on a ballot question"

Renumber accordingly

2011 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2327

2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee

Fort Union Room, State Capitol

SB 2327

March 11, 2011

15327

☐ Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to the use of state or political subdivision services or property for political purposes; and to provide a penalty

Minutes:

Vice Chairman Randy Boehning opened the hearing on SB 2327.

Senator Dick Dever, District 32, appeared to introduce SB 2327. This came about as a result of an issue a couple of elections ago where the first legacy fund bill was measure 2 and there were some, what some of us considered inappropriate, advocacy in opposition to that which later in another form actually became law by the people of North Dakota. We put together this bill and it was in the session last time. It went through some evolution and finally failed in the house. We bring it back to this session because we consider that to be inappropriate. There are some difficulties with it and I think that is why it failed the last time. What constitutes advocacy? When is a public official advocating and when are they providing information to the public? In the senate we amended it to reflect some language that basically is in the last couple sections to try to clarify that.

Dustin Gawrylow, Executive Director, North Dakota Taxpayers Association, appeared in support. **Attachment 1.**

Rep. Lonny Winrich: Under federal law I know that certain nonprofit organizations are prohibited from getting involved in political campaigns because of essentially the subsidy that is provided by the federal government. If a nonprofit that is somehow exempted from state sales tax or something under state law wants to be involved in a political campaign, would that be considered using public resources to campaign?

Dustin Gawrylow: I believe any of those organizations would already be prohibited from actively having campaigning and electioneering activities. What this bill is really getting at is the public entities, the public employees, on company time, on state time, on taxpayer time, using that time and that subsidy. Any private organizations that have a tax exemption are already going to be restricted from doing anything beyond that so I don't think there is an issue there.

Rep. Lonny Winrich: I think that is an area of contention especially with some of the recent Supreme Court decisions.

Rep. Kim Koppelman, District 13, appeared. We had a bill last session which was HB 1347 and it dealt with this very issue. HB 1347 was a bill that simply attempted as did SB 2327 as originally introduced to clarify what prohibitions there are to using public property for political purposes. The law, as you probably already know, has a prohibition on this but it has often been viewed as a prohibition on campaigning for candidates. In other words the department of xyz in the state of North Dakota cannot say vote for Smith instead of Jones for senate. We all understand that if they are doing it in their official capacity if they are spending public funds to do it, or if they are using public property to make that case. They have every right under the United States constitution free speech to do whatever they choose in their private life using their own resources or those of another organization and so on. I support SB 2327 in its original form. I do not support it in the form you have before you today. The reason is I think the senate made some amendments to the bill that essentially are the crux of the disagreement between the house and the senate during the last session. Last session we had a conference committee where the house and the senate had some pretty serious disagreements on the shape the bill should be in its final form and they couldn't agree. The senate finally ended up receding from its amendments, took it to the senate floor, and promptly killed it so we had no bill. **Attachment 2 (original bill).** **Attachment 3 (color coded version of the engrossed bill that you have before you).** What you see in blue, one word on Line 18, that is an item that was struck in the original bill. The overstrike was removed in the senate amendment. Red means that is the amended language of the senate. **Attachment 4 (the senate amendment)** was handed out. Between those three documents you will hopefully be able to sort out exactly what was introduced, how the senate changed it, and what you had before you today. Let me give you a little bit of history before launching into a little more detail on why I think this committee should either restore the bill to its original version or substantially so or perhaps kill the bill if the only option is the senate version. When this item came before us during the last session, the objective stemmed from concerns that had been raised about state's government entities and it could have expanded to political subdivisions and others using your tax dollars to convince you how to vote. Frankly, it doesn't matter to me if that is an election where you are talking about candidates, bond issue election, proposed constitutional amendment election, or an initiated measure election. In any of those cases, it is inappropriate for government to use your tax dollars to convince you to vote one way or another on that issue. I have no problem with government giving you some factual information. I realize that the senate version calls for that. What concerns me, however, is what the definition of that factual information might become. For example, let us say the city says we want to repave Main Street and so when they give you factual information, the factual information becomes well, it is going to cost this much money to pave Main Street and if we don't pave it, the potholes are going to get bigger, and soon we will find small children being lost in them and people will be killed. Is that factual information or is that advocating for a vote one way or another. I think that is open to question in the language of the bill in the version you have before you from the senate. Last session the main crux of that bill was dealing with initiated measures because the foggy area in law seemed to be whether or not a state entity or a public body could advocate, could spend state dollars or use state property, for or against a measure on the ballot. There was some of that activity going on, frankly. It was cause for great concern among many of us in the legislature and

that is where the bill came from last session. Because that bill died in the manner I described, some of us who were involved in that legislation promptly requested an attorney general's opinion at the close of the session. **Attachment 5 (attorney general's opinion).** The first paragraph was read. I believe because of that the subtle law we have where the attorney general's office obviously cites court cases that have been decided on this matter and so on is that you can't use state resources and that includes state property or local political subdivisions' money to advocate for or against a candidate, for or against a ballot measure, for or against a bond issue, etc. I have no problem with people exercising their first amendment free speech rights. The question has to do with public property, public dollars. Let us look at the bill before you and I will point out a couple of my concerns about the senate version. They have deleted the language on Lines 18-19 that say in any bona fide news story, commentary, or editorial. I think it is a real mistake to delete that. I think that is good language that clarifies that if the mayor of the city wants to write an editorial not using public money or public property that says I am your mayor and I really believe we need to pave Main Street and here is why. There is nothing wrong with that. I think it is a mistake to have the word expenditure at the end of Line 19. I believe that use would be a clearer term. Expenditure to me implies the actual spending of money and that is not all we are talking about here. We are talking about public dollars and public property. If you check a state car out of a state pool and use that car to run around the state campaigning, that is inappropriate use. We should restore the overstrike on the word state on Line 18 because it really doesn't fit with the language above where it talks about political subdivisions, etc. and other entities of government. It implies that it is a state official where as I think the original version of the bill that Senator Dever introduced struck state and put public to clarify that point. This seems to create an odd dichotomy. The last sentence beginning on Line 21 and ending on Line 24 that was amended by the senate version effectively negates the entire statute and this entire bill.

Rep. Karen Karls: Suppose there was an initiated measure that was put on the ballot and I as a legislator have access to the legislative council. If I asked them to give me information or some kind of an analysis on this measure, that would be using public funds and resources. Would I be prohibited under this bill from doing that?

Rep. Kim Koppelman: I don't believe you would either under the bill or under current law because in the scenario you described you would be asking for factual information. If you look at the attorney general's opinion, it reiterates the fact that you can do that. If, on the other hand, you call the legislative council and said look I am really against this ballot measure. I want you to give me every piece of information that I can to go advocate against it and you ask them for biased information, then I think you would be in violation.

Rep. Bill Amerman: I will use the Wisconsin situation where they are in the capitol. Is that the type of thing this would prevent?

Rep. Kim Koppelman: No, not at all. I think what people are doing in Wisconsin are exercising many of their constitutional rights. What this bill deals with is in a campaign situation or where something is being voted on and that comes back to the definition of a political purpose. You can't use tax dollars to advocate either for or against those kinds of candidates or measures in a campaign. You can use your own money. You can speak as loudly as you want, but not tax dollars.

Rep. Bill Amerman: But the heading says or property. The state capitol is property so you can't use that to demonstrate.

Rep. Kim Koppelman: I don't think anyone would twist the definition of the use of public property to the extent that says you can't set foot on public property and state an opinion. We wouldn't be here if that were true. The key is an official of government or an agency of government should not be using your tax dollars to convince you how to vote. It has nothing to do with what the public can do when they come into a public building or anything like that.

Rep. Lonny Winrich: Essentially the same question that I asked Mr. Gawrylow but I have managed to think of a couple of examples. Earlier this session the finance and tax committee heard a bill that related to a sales tax exemption essentially for gun clubs. Gun clubs are pretty notorious for endorsing political candidates or recommending against political candidates. Would this apply to that?

Rep. Kim Koppelman: No, I don't believe it would at all. The only restriction on this is the use of public property or public funds. I understand your point but virtually everyone in society either has access to or utilizes some sort of a tax deduction, tax break, tax credit, etc. Your question really goes to the understanding of whose money is it and your implication is that if we allow someone a tax break, we are somehow giving them something that belongs to the government. I would argue that all of the money belongs to individuals or entities and that the government takes from us a certain amount of money.

Rep. Lonny Winrich: The legislator's badge is purchased with state funds. It is common practice for legislators to wear those badges when they are campaigning for office if they are incumbents. Is that a misuse of state funds?

Rep. Kim Koppelman: I don't believe so. Are you using that for a political purpose? I suppose you could argue that if you walked to someone's door and said I want you to look at this. This is a house of representative's pin. I want you to vote for me because I am wearing this pin. Then maybe you could make that argument. If you incidentally have it on your person, I don't think any court in the land would argue that you are using that for political purposes. This has to be a direct action.

Lynn Bergman, Bismarck resident, appeared. Attachment 6.

Tom Bodin, North Dakota Farm Bureau, appeared. Attachment 7 (amendment) comes from Robert Harms. We are not supporting or opposing his amendment. He asked us to distribute this to the committee because he was at another hearing. North Dakota Farm Bureau does support SB 2327 which would not allow state or political subdivision services or property to be used to support statewide initiative referred measures, a constitutional amendment, or a measure, or a political subdivision ballot measure. This did happen a couple years ago on a ballot measure when our government employees used public property to oppose or support a statewide ballot measure. Government computers were used to send emails and billboards were placed on public property. It has also happened in local ballot measures too as well. Under current law government property or services cannot be used for candidate campaigns. This should also extend to ballot measures too

as well. A question that was asked earlier about nonprofit groups, North Dakota Farm Bureau is a nonprofit and we can as an organization use our membership dollars to go towards supporting a measure or opposing a measure because they are federal campaign laws. What a group like ours has to do is create a Pac system, raise separate dollars, and then those dollars could be used on a campaign or a ballot measure.

Rep. Bill Amerman: The factual information that may be provided, you provide factual information. The other group provides different factual information. What is factual information?

Tom Bodin: That is an amendment from someone else.

Rep. Karen Karls: When did you refer in the beginning of your testimony to a ballot measure that you were mentioning?

Tom Bodin: A couple years ago I know our organization was on the ballot talking about measure 1. There was definitely a campaign used at that time on the emails. We did receive them from government agencies that did go through. It had their letterhead on it. Billboards were placed on state properties at that time to campaign for or opposed to that particular measure. During your campaigns you cannot go place a billboard or a poster on state property. We would like the same thing to not allow a billboard to go on state property.

Rep. Karen Karls: I am assuming measure 1 was the first time the legacy fund was voted on? It was stated yes. Do you have proof that there were billboards on state property? Could that have been prosecuted?

Tom Bodin: I can try to go back and provide the committee sort of a series of emails that did go through. The question was addressed at that time is that proper and it was determined that it was happening during that time.

Rep. Vicky Steiner: I really appreciate you bringing this issue forward. Both parties think it is a serious issue. The difficulty is the gray area as I would agree with some of the comments Rep. Amerman stated, the facts. We will wrestle with that in this bill. Even this session I have had an email from a public employee. I don't know if they took time off, but the address was a public email and it was during the day and it was supporting funding for that particular university so it is still occurring. I think this issue is very important to our state and we should look at ways to at least if this is too broad maybe do something with it because it does occur.

Tom Bodin: We would be more than happy to work to try and improve this bill if you see fit.

Rep. Lonny Winrich: You mentioned the Farm Bureau's tax status and restrictions on campaigning at the federal level. Does the Farm Bureau receive any specific tax exemptions or anything under state law that does not derive from your federal status?

Tom Bodin: The Farm Bureau is classified as a 501C3, nonprofit organization. There is no direct benefit but talking about on the tax exempt side, yes there is.

Rep. Lonny Winrich: It essentially pertains to the federal line of status?

Tom Bodin: Yes.

Opposition:

Keith Magnusson, North Dakota League of Cities, appeared in opposition as they were in the senate. Listening to all the testimony and questions I was getting more confused as I was going along. Maybe that is one of the reasons that we are opposed to this. We are not opposed to the concept. We are dealing with the statute that dealt with candidates. Everybody pretty well worked with that. Now you are putting ballot measures, political subdivisions, and all of these types of things in there. One person's facts are another person's opinions and how do you sort this out? I am not sure this bill does what you want it to do because of all the questions that come up. I can think of a situation that happened in Bismarck. There is a vote on a smoking ordinance. The city commission came up with a smoking ordinance saying we can no longer smoke in bars. The citizens exercised a right by petition. The city is now putting this on for a vote. What happens if the city auditor gets some things together for the mayor? He may have to answer questions or say this is what we did. This is why we did it. Is that all going to be facts? Is it all going to be opinion or is there going to be some mixture? When the mayor is talking, is this a fact or is this the opinion of the mayor or the opinion of the city commission? Obviously they passed this. They must have had some reason. When you are voting on things as you know as a legislator, are you voting all on facts? You have some opinions that you are applying to those facts. This is a difficult issue. I hate to mention the word study, but it really probably is something that ought to get everybody and legislators together to study.

Todd Kranda, Missouri River Energy Services, had Mr. Magnusson present the attached testimony because he was unable to be here. **Attachment 8.**

Bev Nielson, North Dakota School Boards Association, appeared. I think the points have been made about it being unclear. I am going to speak from the perspective of elected school board members. We believe that part of what we are elected to do is to gather information, to evaluate it, and to make decisions related to our school districts. If a resolution is passed by a school board, for instance, that according to their study and all their information gathering and whatever, they pass a resolution to put a bond issue on the ballot for a new school or such as that, they have already publicly gone through the process that they are on record. It wouldn't be on the ballot if they didn't say their passage of it because it is their job to put it on the ballot. If an elected body makes a decision, then telling people about why they made that decision, from our perspective, is part of their job. It is part of what they are elected to do is to inform their constituents as to the rational basis in their opinion for the decision they made to ask the taxpayers to pass a bond issue. That is one example. From the perspective of the school board, the information they are going to present is information as to why they made the decision they made. They are going to consider those facts. For instance, we would have to double our class size in certain buildings. We would have to do this or we would have to do that. We need to get a little

more thoughtful about what we consider advocating and who considers it part of their job to do that advocating. I know many of you legislators hear from your school board members about how a certain piece of legislation would impact your district. If we were unable to communicate that to you, it puts us in a poor position. From our perspective we see some real potential liability here for criminalizing activities that elected school boards feel is part of their duties.

Warren Larson, North Dakota Council of Educational Leaders, appeared. I remember back in 1989 when we had some tax measures referred. In the Williston public schools we had to cut \$750,000 out of our budget in January and February. I went out to Lions, Kiwanis, Rotary, Lutheran Ladies, whoever was asking me to come out and visit and told them what would happen if we cut this out. The only place we could cut was staff. The only staff we could cut were noncertified people. We would cut 12 to 14 people out of our classified staff in the middle of the year. Under this was I stating facts or was that my opinion because I got soundly criticized for that being my opinion? The measures went down. We laid off 12 people. We had no choice because the boom had gone bust. We were barely paying bills and we had to cut people. It took us a long time and we never did recover from some of that. Under this bill I don't know what I would have done. To me, it was fact. To the people that didn't like what I was saying, it was opinion. The other point someone made about campaigning with their badge on. I have worked with enough attorneys over the years to know that would be challenged in a heartbeat because that is public property.

There was no one neutral on this bill.

The hearing was closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee

Fort Union Room, State Capitol

SB 2327
March 18, 2011
15692

☐ Conference Committee

Committee Clerk Signature

Carmen Hunt

Explanation or reason for introduction of bill/resolution:

Relating to the use of state or political subdivision services or property for political purposes; and to provide a penalty

Minutes:

Chairman Bette Grande opened the discussion on SB 2327. There were several proposed amendments. One was from Todd Kranda of Missouri River Energy Services. The Kranda amendment was adding in on Line 24, solely for the purpose of educating the voters on a statewide initiated or referred measure, a constitutional amendment or measure, or a political subdivision ballot question. Let's subcommittee this with Rep. Streytle, Rep. Steiner, and Rep. Winrich. Also, there was an amendment from Rep. Boehning. **Attachment 1.**

Rep. Karen Rohr: Do we have Rep. Koppelman's amendment?

Chairman Bette Grande: Please review that option subcommittee.

Rep. Lonny Winrich: Are these considered amendments to the engrossed version or the original bill?

Chairman Bette Grande: I am thinking all the amendments you have in front of us right now are engrossed.

Rep. Lonny Winrich: The amendment we just handed out is going to be referred to as the Boehning amendment?

Chairman Bette Grande: Yes.

Steven Podoll, Law Intern, offered some explanation for the 1001 version of SB 2327. This is part of the Legend system software that we use to create these amendments and bills. This is basically showing the changes as they occur. There is no way to access this 1001 unless you talk to LC. These were accepted by the senate committee. If you look at Page 1, Line 18, you can see when it says remove the overstrike over state. That is in purple or blue because that's what the software puts it in to show a change that was made

through original century code and then changed back. The original bill proposed to remove the word state, correct?

Chairman Bette Grande: Yes.

Steven Podoll: That is why it is that color. It is the marked up version. Rep. Koppelman did say that.

Chairman Bette Grande: Committee what you need to do is grab hold of all three of them that Rep. Koppelman. You have the original bill. You have the layout of the amendment. Then you have kind of the engrossment of the amendment. I separated them and that is why I got confused. You have the Koppelman comments whereas he is asking to go back to the original bill. You have the Kranda amendment. Then you also have the Boehning amendment. The subcommittee can look at all of those and decide how and what they want to bring back to the committee.

Rep. Karen Rohr: Could you identify again the subcommittee members?

Chairman Bette Grande: Streyle, Steiner, Winrich.

Discussion ended.

2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

SB 2327
March 24, 2011
15947

☐ Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to the use of state or political subdivision services or property for political purposes; and to provide a penalty

Minutes:

Vice Chairman Randy Boehning opened the discussion on SB 2327.

Rep. Roscoe Streyle: I don't really know if the subcommittee really made a decision or not. I would just as soon personally see it back to the original bill with some inserted language. I would make a motion to take it back to the original bill and include this section may not limit the freedom of speech of any officer, employee of the state, or any political subdivision.

Rep. Karen Rohr seconded the motion.

Rep. Gary Paur: What bill is this?

Vice Chairman Randy Boehning: 2327. Rep. Streyle, what was your motion?

Rep. Roscoe Streyle: Take it back to the original form of the bill as it was proposed.

Vice Chairman Randy Boehning: 01000? Then you had a further amendment on that?

Rep. Roscoe Streyle: Then I would just include the sentence which starts in the version that came over from the senate on Line 20. This section may not limit the freedom of speech of any officer, employee of the state or a political subdivision.

Vice Chairman Randy Boehning: Okay.

Rep. Roscoe Streyle: The original bill as it was introduced and add that one line.

Rep. Karen Rohr: Just a point of clarification with Rep. Streyle. You are looking at the color coded original bill of Rep. Koppelman?

Rep. Roscoe Streyle: I don't have that copy I guess. The original bill just inserted language on Line 8 and 9 and then it struck state and inserted public on Line 18.

Rep. Lonny Winrich: I am going to resist the amendment. I think the senate version of the bill is better, but I think the bill is unnecessary. The attorney general's opinions indicate that current law applies to these situations. You can't use public resources. The taking out of the term state so that it applies to school boards and county boards, etc. is also troublesome because the issues that are dealt with at the local level I think are quite different from those that often surface in a statewide campaign. As Ms. Nielson from the School Boards Association said, when the school board has to propose a bond issue or a mill levy increase to support the budget, they have I think a public duty to explain the budget to their constituents. I believe this would hamper this process.

Rep. Vicky Steiner: Could I entertain a motion to go back to state, strike public, and then also take out a political subdivision ballot measure? It would just be state officeholders. Would that take care of that concern?

Vice Chairman Randy Boehning: Which bill are you looking at, Rep. Steiner?

Rep. Vicky Steiner: I am looking at 01000.

Vice Chairman Randy Boehning: Your motion is to further amend?

Rep. Vicky Steiner: Further amend and go back to state and take out a political subdivision ballot measure.

Vice Chairman Randy Boehning: On Line 9 you would take out a political subdivision ballot measure?

Rep. Vicky Steiner: Correct. Go to state office.

Rep. Lisa Meier seconded the motion.

Vice Chairman Randy Boehning: That would read then, a statewide initiated or referred measure, a constitutional amendment or measure, overstrike a political subdivision ballot measure. Then Line 18, remove the overstrike on state and overstrike public and then we have the other language, this section may not limit the freedom of speech of any officer or employee of the state or a political subdivision.

Rep. Roscoe Streyle: We could take out or political subdivision then too.

Rep. Vicky Steiner: I would recommend that.

Vice Chairman Randy Boehning: After state, we will have a period and just overstrike or political subdivision.

Rep. Vicky Steiner: Can I explain a little bit what the thinking is on this bill? The intent of this bill is really about a statewide initiated measure where you have state officeholders

using state funds to say don't vote for this. I agree with Rep. Winrich in the fact that in theory people should know that is the law because we do have that in current law. Sometimes we will put things in to make things even more clear. It clarifies that if there is an initiated measure, you can't use state resources to say vote no or vote yes. I think it would be worthwhile to listen to Rep. Winrich's research that he has on attorney general opinions which I wasn't aware of. For example, if a state employee at UND sends an email and says don't vote for something, it is so miniscule. It is not worthy of prosecution. Can you let the committee know some of that?

Rep. Lonny Winrich: On the last page of the attorney general's opinion that Rep. Koppelman handed out he says in addition, a trivial or de minimis use of public funds or resources would likely not be determined by the courts to constitute a violation of the law. The one court case that I know of where this was actually determined was this chief justice of the Supreme Court was running for reelection and essentially asked his colleagues if he could appear in campaign photographs and so on in his judicial robes. They said yes. That was a de minimis use although the robes are state property. They are paid by the state. In 2008 when I was running for election, I had been out of office for four years so I was not an incumbent, but I had been a representative before that. I called John Walstad at legislative council and asked him if I could wear my representative pin. John did some research on it and the answer I got was no. That would be a corrupt campaign practice under the law because it was use of state property. I don't know if the court would determine that was a de minimis use of state property or not, but it was interesting that Rep. Koppelman gave the wrong answer when I asked him that question in testimony. It is a very complicated interpretation of the law and the two attorney general's opinions go through a number of interpretations across the state. Basically the laws are enforceable. It is a question of whether the state's attorney or the court determines that it is worth it or not.

Vice Chairman Randy Boehning: Most of the time when something like this happens, it happens after the fact, after the campaign is done. I know West Fargo is going to have a school bond issue going to the voters in May for \$82 million. They went from \$60 million to \$40 million, now back up to \$80 million. We don't want to see them have the billboards or portable signs on the school property. I think that was discussed in one of the opinions too where they can't use direct campaign money that way. We want them to get out the correct information.

Rep. Lonny Winrich: There was a rather highly publicized example of that just recently when the hockey coach at UND sent emails to all of his former players saying flood the senate with emails. The senate complained about all the emails, but I don't think anyone criticized the hockey coach for sending an email out from his state account. The relatively trivial uses of state resources are not so egregious.

Rep. Glen Froseth: We recently had an issue in the insurance commissioner's office where there was some federal money or program that was awarded to the state and he come out with a public statement on this program using his office as a backdrop. It happened to be right during a campaign. I don't remember all the details on it. They really chastised over that.

Vice Chairman Randy Boehning: I remember something on it. He did some public service announcement for some federal program that was coming up. That was actually during the campaign. That was when the money came in during the summer. It was one of those things you had to use the money, use or lose it.

Rep. Karen Rohr: Would you reiterate the amendment?

Vice Chairman Randy Boehning: Using the original bill from the senate, we are going to overstrike the language on Line 9, a political subdivision ballot measure and then Line 18, we are going to remove the overstrike on state and overstrike public and add in the language, this section may not limit the freedom of speech of any officer or employee of the state.

Rep. Gary Paur: I can't remember.. Did we remove all the engrossments from the senate?

Vice Chairman Randy Boehning: No, we did not.

Rep. Lonny Winrich: We are working with the original bill.

Rep. Roscoe Streyle: I can restate it on the engrossed version then. On the engrossed version, Line 9, remove a political subdivision ballot measure or. Okay, I will leave the or. Line 18, strike public. The end of 18, take off the overstrike all the way through editorial on Line 19. Strike the rest of 19. On Line 20, strike public funds or resources. On Line 21, after state strike or a political subdivision. The rest of 21, strike, and 22, 23, and 24, strike.

Vice Chairman Randy Boehning: Then we should read as the original bill.

Rep. Roscoe Streyle: That should read just as you stated then after that. That's what the amendment would be on the engrossed version.

Vice Chairman Randy Boehning: Go back to the original version.

A voice vote was taken. Motion carried.

Rep. Glen Froseth made a motion for a Do pass as amended.

Rep. Vicky Steiner seconded the motion.

Rep. Vicky Steiner: I would agree with Rep. Winrich. We work on a lot of bills where we say it is already covered, but I think this was an issue. When I campaigned, people said they want more transparency. To add a couple lines that says this is part of the activity where we have to be careful that we are not using state funds, I think it is better to pass it than to say we are not going to work on it. The public is concerned about state funds being used for political purposes. I don't agree that I should be getting emails from state computers telling me to vote this way or that way, and I don't agree with the court that it is too small to prosecute and I think patterned in propriety over time, which is not my own words but it is a quote from a senator from New York, if you allow things in a small way to

continue, actually society gets numb to the fact that it is not right. I am going to support the bill although I can't argue that you made some good points.

Rep. Ron Guggisberg: As a public employee, I am very familiar with these rules and watched them very closely. The only thing that concerns me is that when we start adding more language to it, we are going to get to a point where the people with the information are afraid to share it. I got a lot of opinions from city attorney to attorney general's office on what I can and I can't do. I don't think we want to prohibit people from sharing information that they do have. Sometimes these people have the most information especially relating to initiated measures. I am going to resist the motion.

Rep. Lonny Winrich: I think a big part of the problem is that there is a lot of misrepresentation of some of these things. For example, the recent headlines about UND spending \$41,000 of state money to fly an airplane down here. That was not state money. That was from the UND foundation. I don't think of the airplanes at UND are actually owned by the state. They are all owned by the aerospace foundation. They are purchased with privately raised funds from various sources. Alumni is a big one. To say you can't send me an email that disputes those things or points out what the facts really are could be a serious problem.

Vice Chairman Randy Boehning: It is a pretty big issue out there especially when you get some of the measures and so forth. We need to get the facts out there and that is the most important issue.

DO PASS AS AMENDED, 7 YEAS, 4 NAYS, 2 ABSENT. Rep. Gary Paur is the carrier of this bill.

2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

SB 2327
March 25, 2011
16026

☐ Conference Committee

Committee Clerk Signature

Carmen Hunt

Explanation or reason for introduction of bill/resolution:

Relating to the use of state or political subdivision services or property for political purposes; and to provide a penalty

Minutes:

Chairman Bette Grande opened the discussion on SB 2327. I would ask the committee to reconsider their actions.

Rep. Roscoe Streyle: I move we reconsider our actions on 2327.

Rep. Karen Rohr seconded the motion.

A voice vote was taken. Motion carried.

Chairman Bette Grande: By doing so I believe what we have now just done has brought the bill back and it is now in its original form in front of us. We are now back to the 2000 version of the bill.

Rep. Gary Paur: Attachment 1 was handed out. He was asked by Chairman Bette Grande to share this information with the committee. In conversations with Mr. Bjornson, the top portion of the handout deals with the bill. I came down and found out we were probably going to recall the bill. Rep. Koppelman told me that a political subdivision ballot measure, since we took that out, that pretty much gutted the bill. I told Rep. Steiner and Chairman Bette Grande that I would go back and talk to Mr. Bjornson about the effects of that on the bill. In our discussion this is basically what we came up with (referring to the lower part of the first page of the handout). That last line Mr. Bjornson didn't have any trouble with leaving that in. He said it was rather unnecessary. I told him how many people had trouble in testimony concerning the presenting of factual information. He said it would probably be better if we just took it out.

Chairman Bette Grande: You are still removing Line 21 down to the end?

Rep. Gary Paur: Yes.

Rep. Mark Sanford: When you say the last sentence is not needed, evidently that is covered elsewhere in the code. Is that what you are saying?

Rep. Gary Paur: I don't know if it is necessarily in the code anywhere. It doesn't hurt. It was just that there were so many objections to it in the testimony that it was opinion that it is probably just better to leave it out.

Rep. Mark Sanford: My assumption is that a school board would have the opportunity to tell why they have a bond issue on the ballot.

Rep. Gary Paur: Yes, as long as the information was factual and didn't cross over into the political end. We had the same discussion with Mr. Bjornson concerning factual information. One person's facts are another person's opinions. There probably is no way to legislate that out.

Chairman Bette Grande: With that, Rep. Boehning had handed out amendments prior to my leaving. In the removal of the lines you are talking about, there was language that said factual information may be provided solely to educate the voters on a ballot question. It may not predict, project, or presume in any manner the effects of the election. I think that was to kind of clarify that they have the opportunity to bring out their factual information and not do the influential portion of it. Right now in West Fargo there was an article in the paper and it said these are the schools that we as the school board feel we need and this is how much it costs. At that point that is the end of the discussion. It is not suppose to be because kids are going to have to sit in classrooms of 50 and we are going to starve them when they show up. I think that is what that language is trying to get to if you have that Boehning amendment that was handed out a week ago.

Rep. Ron Guggisberg: A few years ago in Fargo there was a ballot measure for a sales tax for economic development and all the mayors said vote yes on this. They couldn't do that anymore according to this?

Chairman Bette Grande: What it does is it says that you can't do it while you are on duty.

John Bjornson, Legislative Council Staff, appeared. This is using government resources, public resources. Currently the law says you can't use government resources to advocate for or against a candidate for office. This bill would expand it to cover ballot measures. The situation that you indicated, I don't know exactly how that went about, but simply a public official stating—I think a mayor or a councilman is probably always on duty. It would prohibit them not from saying something like that but it would probably prohibit them from using, let us say, the city's computer system to create a document that they are sending out to the press, using the resources not necessarily the voice of the individual I think what you were getting at.

Chairman Bette Grande: What I was kind of thinking of he shouldn't be holding a press conference in his office on city time to do a promotion.

John Bjornson: Many groups or candidates use this building. It is a public place open to the public. Where do you draw the line? I don't think the law does draw the line and there

are many gray areas that have been mentioned just in the last couple of minutes that I have been sitting here. I don't think we can draw a firm, straight line anywhere to say this is okay, but this isn't okay. When you really start using the resources beyond standing in a building...

Rep. Mark Sanford: Okay, I am a superintendent of schools and I am invited to the Lions Club to give a presentation on the bond issue. What can I do and what can't I do?

John Bjornson: I don't know if I want to answer the question. Again, as a superintendent of schools, I think you were probably on duty 24 hours a day, 7 days a week. Going to the Lions Club for lunch is probably considered part of your responsibility in some respects as part of your job duty. You are not utilizing the resources of the school district to answer questions about the bond issue. If you are providing information, I don't see that as any type of violation. If you go on and say you need to vote yes on this issue, you are advocating but what resource are you using of the school district? I can't give you a firm answer there.

Chairman Bette Grande: Do you think that language about factual information enhances what we are trying to accomplish?

John Bjornson: I just saw it briefly here. It raises other questions. Rep. Pauer alluded to what is factual information. It goes back to the bottom line here. Are you using resources? Let's say the school district does print up a flyer that they send out and here is the information that the bond issue is going to be \$82 million. It is going to provide 3 new schools. It is going to do all these things. What Rep. Boehning's amendment suggests, that is fine. Then you brought up that it is going to affect the school lunch fund and we are not going to provide breakfast anymore. That is presenting a fact, but you might see it as a discouragement to vote no. I don't think anybody really can say one way or another. I don't think it does a whole lot to clarify things. I don't think it does anything that makes it any different.

Chairman Bette Grande: One of the parts that Rep. Paur presented has us striking by a public official with no expenditures of public funds or resources. If we strike that language, have we not just undone what you are saying and that is to be clear that we are dealing with the resources, not necessarily the time?

John Bjornson: I think when I was visiting with Rep. Paur my point was the law prohibits the use of public resources. It doesn't prohibit someone speaking or providing facts if those facts aren't saying vote for or vote against. That is why I said it maybe doesn't enhance anything, because the bottom line is you have to use resources for a political purpose to constitute a corrupt practice. We are defining political purpose here. It maybe doesn't add much.

Chairman Bette Grande: This section may not limit the freedom of speech of any officer or employee of the state or a political subdivision. Isn't that kind of our constitutional right? Do you think we need to have that language in here or not?

John Bjornson: That is what I suggested to Rep. Paur. The first amendment is a little higher on the hierarchy than maybe a statement in a bill. That is why I suggested that maybe it wasn't necessary. It might be an interesting statement to say this is what we are not doing but it may not add a whole lot to the law.

Chairman Bette Grande: Striking it doesn't affect much of anything since we are going to fall onto the constitutional right first?

John Bjornson: I guess that was what my opinion was.

Chairman Bette Grande: Under the first part it says political purpose, means any activity undertaken and then adding the language to initiate or support of opposition to a statewide initiated, so putting initiate or support. Does that affect?

John Bjornson: I just discussed that briefly with Mr. Harms and Rep. Paur. It wouldn't affect the city commission sitting at that meeting saying we ought to do this as long as they again don't utilize the resources to initiate the measure. The thing to keep in mind is city commissions, at least under home rule cities, have the authority to place measures on the ballot. They will use probably some resources to go through that process that they undertake in doing so. This is just a definition within the bigger part of the law which says not utilizing public resources. My only concern is that some public bodies have that authority under law to initiate a measure and some resources are obviously used. One example I can think of is that the city has to pay to publish. Other laws might have some intertwining with this when you do that.

Rep. Gary Paur: Do you think leaving that initiated out or putting it in would affect the bill substantially? Would leaving it out weaken it?

John Bjornson: It is not going to weaken it because you are adding to the existing law making it cover more things. That would maybe just take it one step further, one additional prohibition.

Rep. Mark Sanford: I am trying to find a right line that helps a public official know when they can and when they can't. I am going to give you a scenario. The school district is considering a bond issue and the board members and officers are talking about it and they are saying things that might be interpreted to be supportive of passing a bond issue, but they haven't made the motion to do that yet. We really need this. This building is a wreck. It has been 65 years since we put anything in here. I am assuming that in the discussion they can do that because they have no official intent yet of having an election. The motion is made to have an election. Now I am assuming that when they are in session or in a meeting they have to be factual? When they leave the meeting, they can make their own comments as an individual. As a body, can they?

John Bjornson: I don't think the idea here is to discourage discussion by public officials at meetings regarding the pros and cons of any proposal that is being made. It is using the resources of the public entity for doing such a thing. The school board at their meeting making their motion is part of their responsibility to discuss. For the school board to go back to the school office and develop flyers that say vote yes on this measure I think then

this proposed new language would probably say you can't do that. Under the current law maybe they could. I know there are some attorney general opinions that suggest that a public body needs to have certain authority to do something. I haven't looked into how that impacts schools.

Rep. Mark Sanford: I think it is pretty common that once you have made the determination to go for a bond issue that all of a sudden the friends of good schools is organized and you have your resources and kind of your advocates that are going to take care of that. To me it is bothersome, to me so that I understand kind of what you could do as a board and as an official when you are in session. I think it is very common to have an advocacy group. You would almost be foolish not to have an advocacy group if you were going to have a bond issue. I just want to be sure that what you can do as individuals and as a body when you are in an official meeting is clear.

John Bjornson: Did I answer your question?

Rep. Mark Sanford: Yes.

Vice Chairman Randy Boehning: How does this affect the League of Cities, Association of Counties, and the School Boards Association?

John Bjornson: I haven't looked at that, but I don't believe it is intended to address—we are talking about the use of state and political subdivision resources. Those organizations have dues paid to them to participate. They are not state or governmental organizations. They are groups that provide assistance to the governments themselves. I don't think this would affect them.

Vice Chairman Randy Boehning: I would assume most or all of the money that they run on is tax dollars that are paid through dues. Technically, wouldn't that be tax dollars?

John Bjornson: I don't know if I can really answer that. I know from our standpoint we pay dues to the National Conference of State Legislators and NCSL represents the states. Part of their function is to represent the states before the Congress. If a policy position is taken by NCSL to oppose something they believe is going to affect the states and the Congress, they do it. The money that is paid as dues or even contracting with another entity doesn't stay public funds once it turns into the hands of the outside entity generally. This could seem to be like open records and open meetings. If you remember about 15 years ago, when GNDA was publishing their magazine and the question was asked if whether the state's contribution for the magazine was just support of the organization or if it was for exchange for a service. In this case I think it was probably exchange for a service so those records probably weren't open to the public. We can find a lot of scenarios that raise questions and are gray areas.

Rep. Gary Paur: I would like to go back to that to initiate or possible insertion. You think there might be a possible conflict with home ruled chartered cities?

John Bjornson: That is hard for me to answer. I am kind of going off the top of my head here. Just seeing that language and trying to think of how it might affect other entities it

certainly is possible that just saying to initiate could suggest that. We have laws that say a city or whoever is going to do a measure has to publish. To initiate, I think if you look at it in the context that I think it is intended is to say maybe you can't use the governing body, let's say the city council can't use the city's resources to get the public to go out and start a movement to do this. They can't use the city's photocopiers to encourage the public to do something that is probably outside the realm of what their responsibilities are.

Rep. Mark Sanford: The Phoenix Elementary School sends home their weekly communicator on Friday and it says remember the election is Tuesday. It doesn't say how to vote.

Chairman Bette Grande: It didn't say how to vote.

John Bjornson: I think that is perfectly okay.

Rep. Lonny Winrich: I want to go back to Rep. Sanford's example about the Lions Club lunch. If he is invited to give a talk at the Lions Club and he is talking about the school district budget and possibly a measure for a bond issue and in order to facilitate this, he decides to use his computer to put together a fact sheet and has his secretary print it off and carries copies of this to pass out to the members of the Lions Club and perhaps drives to the meeting in a vehicle provided by the school district, is he using public resources in an illegal way?

John Bjornson: In the scenario you set forth I don't believe he is if he is simply providing information. If he is going there and those fact sheets on the bottom say vote yes, then he probably has crossed that line. If you look on Lines 18-19, does not include activities undertaken in the performance of a duty of the public office or the position. Going to those type of meetings is something that is part of the responsibility of the public official. No, under the circumstances that you set forth.

Chairman Bette Grande: And to clarify that he doesn't put on the bottom we are voting yes or no.

Rep. Bill Amerman: We pay a certain amount of dollars to use our state computers in a more personal way. How does that affect that?

John Bjornson: I don't recall the details of that situation, but as I understand you maybe pay \$10 a month for the personal use option and that is sort of an exception as I recall that is carved out specifically in law for you to do so. I deal with the election laws and some of the ethics things in the office. I often get questions particularly before elections from legislators saying can I write this letter on my computer or can I use my stationery for this? I generally respond with if you feel the need to ask me, maybe you shouldn't do it simply because somebody else is wondering the same thing.

Chairman Bette Grande: That fine line, we all know that we don't do campaign on our computer. We submit letters from the floor here to constituents that ask us questions. That is a different thing. We are responding to the public and we are using the public fund to do

that. If you are promoting something to them or asking them for money in return in that letter, you have crossed the line.

John Bjornson: I agree. It is this unclear area but you are best not doing something if you have that question whether you should do it.

Chairman Bette Grande: Don't do anything you don't want on the front page of the paper in the morning.

Rep. Roscoe Streyle: I propose we do the first, second, third, and fourth paragraph of Rep. Paur's attachment but we don't necessarily need the freedom of speech the way it sounds. If you wish, I would just remove that also and the next one also.

Chairman Bette Grande: From Line 20 after words resource period and then delete from there on?

Rep. Roscoe Streyle: After editorial. Just remove that all the way down.

Chairman Bette Grande: You are up on Line 19, or editorial period and then delete after that?

Rep. Roscoe Streyle: That was the original bill then basically. Line 8, a statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure, or—that would be the new language. On Line 18, public would be in there. State would need to stay then. Then leave at the end of that the last three words and news story, commentary, editorial.

Rep. Gary Paur: May I make a suggestion? On Line 20-21, just cross out leave in and insert remove.

Rep. Roscoe Streyle: That would do it in there.

Chairman Bette Grande: Do you wish to also have in to initiate or support?

Rep. Roscoe Streyle: If the committee so wishes.

Rep. Karen Rohr: I make a motion to insert that language.

Chairman Bette Grande: On Line 7, after the word undertaken to initiate in support of. All I am adding is to initiate or.

Rep. Gary Paur: On my copy I have to initiate comma or.

Chairman Bette Grande: Or in support of or in opposition of. Do you see where I am at, Rep. Winrich?

Rep. Karen Karls: I do have a question on to initiate. Does that mean that our elected school board may not take a vote and put a bond issue on the ballot?

Chairman Bette Grande: No, he said that did not apply to that. You have what I am going to call the Paur amendment and amended in to initiate comma or and how did you do that bottom part? Steven Podoll, law intern, explained to her what he was going to do. **Rep. Roscoe Streyle** had made the motion and seconded by **Rep. Karen Rohr**.

A voice vote was taken. Motion carried.

Chairman Bette Grande: Rep. Boehning was asking about another amendment.

Vice Chairman Randy Boehning: I move those amendments. Those would have to be inserted in right after editorial.

Chairman Bette Grande: Just that one portion of it.

Vice Chairman Randy Boehning: Just that one portion of it. Factual information may be presented solely for the purpose of educating the voters on a ballot question but may not presume, project, or attempt to forecast in any manner the effect of the election on the ballot question.

Chairman Bette Grande asked him to reread this amendment and Rep. Boehning did so.

Rep. Roscoe Streyle seconded the motion.

Rep. Vicky Steiner: The way this sits, I think I am going to resist this only because attempt to forecast is really tough because with like the legacy fund we had legislators who came to meetings I was at and tax commissioner and some other state officials, and they were in support of the measure and they forecasted out this biennium, next biennium, and ten years from now, this is what we could do with it. Yes, it is factual information, but why wouldn't you be able to forecast in 20 years what the legacy fund was going to do? I don't know why you can't forecast something if it is a fact that it is what their money would generate.

Rep. Lonny Winrich: My concern is not so much with those kinds of projections but in going back to the school board example again, if the superintendent is presenting some information or something and says that we need the bond issue for these reasons and if it doesn't pass, we will have to cut the budget by this much. That is a prediction of what will happen from the election. It seems to me it would be prohibited under this. I think this is very restrictive.

A voice vote was taken on the Boehning amendment. Motion fails.

Rep. Roscoe Streyle moved a Do pass as amended.

Vice Chairman Randy Boehning seconded the motion.

Rep. Lonny Winrich: I wasn't a great fan of this bill in its original form and I like it even less now. After hearing from Rep. Paur and Mr. Bjornson, it doesn't draw any sharp lines. We are not really defining very well what is illegal here and it is open to a lot of

interpretation. We are imposing a Class A misdemeanor penalty on those very _ interpretations. What we are doing essentially, I think, is asking the courts to define what this law means.

Chairman Bette Grande: I think it is important that we at least put something in here. To me, the Supreme Court ruling left vagueness to it and if we can start to make that an address in here I think that we at least draw some lines to where there was nothing before. At least there is something to be worked with. I am not sure in my own mind if this is the perfect language, but I think we have come a long way in not knowing anything and at least we get the information out but don't say yes and no to a vote. That is kind of my take on it and we will differ on it.

Rep. Gary Paur: Like Mr. Bjornson said, this is part of a much larger corrupt practices section of the law which we operate under. This is just adding initiated measures to that. It may be gray but our political practices are also gray. The state and subdivisions are going to have to work under the same restrictions as we do. We are just adding the state and political subdivisions to the restrictions we work under.

Rep. Lonny Winrich: I think there is a significant difference between initiated measures and what we do in the legislature. We are subject to pressure every single day by lobbyists, citizens who come in, by people who send us emails about how they want us to vote on a certain bill. It is part of being a legislator to deal with that kind of thing. That doesn't exist with ballot measures. The ballot measure is out there and there is not a great opportunity to try to influence how the vote is going to go except by the kind of political campaigning that this addresses. I think it is very dangerous to criminalize that.

Rep. Gary Paur: I had that discussion to some extent with Mr. Bjornson. What you are talking about there has to do with lobbying, etc. It is a separate part. This has to do with corrupt practices for campaigning and now includes the campaigning for ballot measures and initiated measures.

Rep. Lonny Winrich: What do the lobbying laws say about initiated measures? Is there an opportunity for some sort of lobbying activity there?

Chairman Bette Grande: I think there is. I think it is spelled out in a lobbying section, but I don't think that is dealing with this particular section.

Rep. Gary Paur: I received an email from the auditor in Northwood. It was very specific, asking me to vote against this bill for various reasons, and I showed that to Mr. Bjornson. He said that was quite appropriate. The city is showing their position on this bill. That does not fall within the lobbying laws. According to his definition that lobbying is when you get a third party to speak on your behalf basically.

Rep. Lonny Winrich: That is dealing with the bill in the legislature. I get an email almost every day from the city of Grand Forks how they feel about certain bills that are on the calendar. I expect that. What I am saying is okay, an initiated measure goes on the ballot like the gambling bill a few years ago. What can that public official do or not do with respect to projecting how gambling might affect law enforcement, city revenues, all sorts of

things? That same lobbying opportunity is not there with initiated measures. It is very different from what we do in the legislature.

Vice Chairman Randy Boehning called the question.

DO PASS AS AMENDED, 8 YEAS, 4 NAYS, 1 ABSENT. Rep. Gary Paur is the carrier of this bill.

March 24, 2011

YR
3/24/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2327

Page 1, line 9, remove "a political subdivision ballot measure."

Page 1, line 18, remove "public"

Page 1, line 18, remove the overstrike over "~~in any bona~~"

Page 1, line 19, remove the overstrike over "~~fide news story, commentary, or editorial~~"

Page 1, line 19, remove "by a public official with no expenditure of"

Page 1, line 20, remove "public funds or resources"

Page 1, line 21, remove "or a political subdivision. This section does"

Page 1, remove lines 22 and 23

Page 1, line 24, remove "purpose of educating the voters on a ballot question"

Renumber accordingly

Date: 3-24-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2327

House GOVERNMENT AND VETERAN AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Streyle Seconded By Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande			Bill Amerman		
Vice Chairman Randy Boehning			Ron Guggisberg		
Glen Froseth			Lonny Winrich		
Karen Karls					
Lisa Meier					
Gary Paur					
Karen Rohr					
Mark Sanford					
Vicky Steiner					
Roscoe Streyle					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Motion made
to take it back
to original bill
and include
language states
on record.*

Date: 3-24-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2327

House GOVERNMENT AND VETERAN AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Steiner Seconded By Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande			Bill Amerman		
Vice Chairman Randy Boehning			Ron Guggisberg		
Glen Froseth			Lonny Winrich		
Karen Karls					
Lisa Meier					
Gary Paur					
Karen Rohr					
Mark Sanford					
Vicky Steiner					
Roscoe Streyle					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Voice vote to
further
amend
the amendment
motion carried*

Date: 3-24-11
Roll Call Vote #: 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2327

House GOVERNMENT AND VETERAN AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Froseth Seconded By Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande			Bill Amerman		<input checked="" type="checkbox"/>
Vice Chairman Randy Boehning	<input checked="" type="checkbox"/>		Ron Guggisberg		<input checked="" type="checkbox"/>
Glen Froseth	<input checked="" type="checkbox"/>		Lonny Winrich		<input checked="" type="checkbox"/>
Karen Karls	<input checked="" type="checkbox"/>				
Lisa Meier	<input checked="" type="checkbox"/>				
Gary Paur	<input checked="" type="checkbox"/>				
Karen Rohr		<input checked="" type="checkbox"/>			
Mark Sanford					
Vicky Steiner	<input checked="" type="checkbox"/>				
Roscoe Streyle	<input checked="" type="checkbox"/>				

Total (Yes) 7 No 4

Absent 2

Floor Assignment Paur

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

Date: 3-25-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2327

House GOVERNMENT AND VETERAN AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☒ Reconsider

Motion Made By Streyle Seconded By Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande			Bill Amerman		
Vice Chairman Randy Boehning			Ron Guggisberg		
Glen Froseth			Lonny Winrich		
Karen Karls					
Lisa Meier					
Gary Paur					
Karen Rohr					
Mark Sanford					
Vicky Steiner					
Roscoe Streyle					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Voice vote
taken. No
reconsider
actions on
2327
motion
carried*

Attachment 1
2327

Senate Bill No. 2327

Recall

Gary Paur's Notes

Points concerning this bill:

- These amendments are a small part of the **Corrupt Practices Act**, violation of which is a **Class A Misdemeanor** with a penalty of *up to "1 year in prison and a \$2000 fine"*
- This bill expands the definition of **political purpose** from **opposition or support of candidates** to include **opposition or support of ballot measures etc.**
- Under current law, regulation of measures is not covered.

Version 11.0776.02000

Line 9—Leave in: **"a political subdivision ballot measure,"** *(This would make the law more uniform across all levels)*

Line 18—Remove **"state"** and leave **"public"**. *(If the law is going to cover political subdivisions in addition to state measure the wording should be changed from state to public.)*

Line 18 & 19 – Leave in **"in any bona fide news story, commentary, or editorial"** *(This section probably should remain in. It was probably removed because of the addition of the text in lines 19-24 by the Senate.)*

Line 19 & 20 – Remove **"by a public official with no expenditure of public funds or resources"**

Line 20 & 21 – Leave in **"This section may not limit the freedom of speech of any officer or employee of the state or a political subdivision."** *(Doesn't add a lot since freedom of speech is guaranteed but doesn't hurt.)*

Line 21 to 24 – Remove **"This section does not prohibit a public official, the state or any agency of the state, or the governing body of a political subdivision from presenting factual information solely for the purpose of educating the voters on a ballot question."** *(This section is not necessary and should probably be removed because of the objections from those testifying.)*

Date: 3-25-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2327

House GOVERNMENT AND VETERAN AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Streyle Seconded By Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande			Bill Amerman		
Vice Chairman Randy Boehning			Ron Guggisberg		
Glen Froseth			Lonny Winrich		
Karen Karls					
Lisa Meier					
Gary Paur					
Karen Rohr					
Mark Sanford					
Vicky Steiner					
Roscoe Streyle					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Voice vote
to accept*

*Paur
Amendment
motion
carried*

Date:

3-25-11
Roll Call Vote #: 32011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. _____

House GOVERNMENT AND VETERAN AFFAIRS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By

Boehning

Seconded By

Streyle

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande			Bill Amerman		
Vice Chairman Randy Boehning			Ron Guggisberg		
Glen Froseth			Lonny Winrich		
Karen Karls					
Lisa Meier					
Gary Paur					
Karen Rohr					
Mark Sanford					
Vicky Steiner					
Roscoe Streyle					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

voice vote
taken
Boehning
amendment
motion
failed

March 25, 2011

VR
3/25/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2327

Page 1, line 7, after "undertaken" insert "to initiate a statewide initiated or referred measure, a constitutional amendment or measure, or a political subdivision ballot measure or any activity undertaken"

Page 1, line 9, remove the second underscored comma

Page 1, line 18, overstrike "state"

Page 1, line 18, remove the overstrike over "~~in any bona~~"

Page 1, line 19, remove the overstrike over "~~file news story, commentary, or editorial~~"

Page 1, line 19, remove "by a public official with no expenditure of"

Page 1, remove lines 20 through 23

Page 1, line 24, remove "purpose of educating the voters on a ballot question"

Renumber accordingly

Date:

3-25-11

Roll Call Vote #:

24

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. ~~2058~~ 2327

House GOVERNMENT AND VETERAN AFFAIRS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

 Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By

Streyle

Seconded By

Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande	✓		Bill Amerman		✓
Vice Chairman Randy Boehning	✓		Ron Guggisberg		✓
Glen Froseth	✓		Lonny Winrich		✓
Karen Karls	✓				
Lisa Meier					
Gary Paur	✓				
Karen Rohr	✓				
Mark Sanford		✓			
Vicky Steiner	✓				
Roscoe Streyle	✓				

Total (Yes)

8

No

4

Absent _____

Floor Assignment

Paur

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

REPORT OF STANDING COMMITTEE

SB 2327, as engrossed: **Government and Veterans Affairs Committee (Rep. Grande, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2327 was placed on the Sixth order on the calendar.

Page 1, line 7, after "undertaken" insert "to initiate a statewide initiated or referred measure, a constitutional amendment or measure, or a political subdivision ballot measure or any activity undertaken"

Page 1, line 9, remove the second underscored comma

Page 1, line 18, overstrike "state"

Page 1, line 18, remove the overstrike over "~~in any bona~~"

Page 1, line 19, remove the overstrike over "~~fide news story, commentary, or editorial~~"

Page 1, line 19, remove "by a public official with no expenditure of"

Page 1, remove lines 20 through 23

Page 1, line 24, remove "purpose of educating the voters on a ballot question"

Renumber accordingly

2011 SENATE GOVERNMENT AND VETERANS AFFAIRS

CONFERENCE COMMITTEE

SB 2327

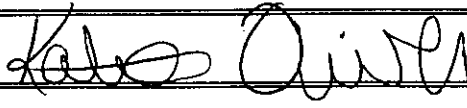
2011 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veteran's Affairs Committee
Missouri River Room, State Capitol

SB 2327
April 14, 2011
16583

☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the use of state or political subdivision services or property for political purposes; and to provide a penalty

Minutes:

No testimony attached.

The committee was called to order, roll was taken and all members were present.

Chairman Dever: If we focus on the 4000 version of this bill, the House had struck the language that the Senate had inserted on line 7. Part of the problem with the issue is that it is subject to interpretation. I think in conversations the idea has been to strike that language, going to the bottom of 4000 the language that the Senate put in is not there but on line 20, strike the words 'of a duty' I think that the reason for striking that language is that it would be subject to interpretation. The other point was, following the end of the bill, line 21 to insert 'factual information may be presented solely for the purpose of educating the voters provided it does not advocate for or against or otherwise reflect a position on the adoption or rejection of a ballot question. In fairness that language was given to me and again that is subject to interpretation as well.

Senator Nelson: What about use of your email or your telephone if you are an elected official, how do you control those?

Chairman Dever: As far as legislators are concerned I would argue that we have been told that our email is how our constituents contact us and we pay for the personal use of our computer. It's all subject to interpretation I guess my interpretation is that if a constituent sends you an email and asks you a question that you have a responsibility as a public official to respond to them.

Representative Grande: You would respond to them but you don't need to tell them how they should vote, that is the issue.

Senator Nelson: You could also slant your answers so it is obvious how you want them to vote. It's really very hard if you are passionate about something to write a down the middle response.

Chairman Dever: If it's a measure that you voted on during the session they might ask you why did you support it but the point I think that the question comes from the constituent and not the official.

Representative Amererman: The new amendment was that your amendment or our amendment?

Chairman Dever: It came from Mr. Harmes and the league of cities and with support from others.

A motion was then made by Senator Nelson that the House recede and amend with a second by Representative Paur. There was no further discussion, roll was taken and the motion passed 6-0

April 14, 2011

923
4-14-11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2327

That the House recede from its amendments as printed on pages 1091 and 1092 of the Senate Journal and page 1285 of the House Journal and that Engrossed Senate Bill No. 2327 be amended as follows:

Page 1, line 18, overstrike "a duty of a state"

Page 1, line 18, remove the overstrike over "~~in any bona~~"

Page 1, line 19, remove the overstrike over "~~file news story, commentary, or editorial~~"

Page 1, line 19, remove "by a public official with no expenditure of"

Page 1, remove lines 20 through 23

Page 1, line 24, replace "purpose of educating the voters on a" with ". Factual information may be presented regarding a ballot question solely for the purpose of educating voters if the information does not advocate for or against or otherwise reflect a position on the adoption or rejection of"

Renumber accordingly

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Government + Veterans Affairs

Bill/Resolution No. 2327 as (re) engrossed

Date: 4/14/11

Roll Call Vote #: 1

Action Taken

- ☐ SENATE accede to House amendments
☐ SENATE accede to House amendments and further amend
☐ HOUSE recede from House amendments
☒ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) _____

- ☐ 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

Motion Made by: Nelson Seconded by: Paul

Senators				Yes	No		Representatives				Yes	No
<u>Devel</u>	<u>X</u>			<u>X</u>			<u>Paul</u>	<u>X</u>			<u>X</u>	
<u>Coyle</u>	<u>X</u>			<u>X</u>			<u>Granada</u>				<u>X</u>	
<u>Nelson</u>	<u>X</u>			<u>X</u>			<u>Amerman</u>	<u>X</u>			<u>X</u>	

Vote Count: Yes 6 No 0 Absent 0

Senate Carrier Devel House Carrier Paul

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2327, as engrossed: Your conference committee (Sens. Dever, Cook, Nelson and Reps. Paur, Grande, Amerman) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1091-1092, adopt amendments as follows, and place SB 2327 on the Seventh order:

That the House recede from its amendments as printed on pages 1091 and 1092 of the Senate Journal and page 1285 of the House Journal and that Engrossed Senate Bill No. 2327 be amended as follows:

Page 1, line 18, overstrike "a duty of a state"

Page 1, line 18, remove the overstrike over "~~in any bona~~"

Page 1, line 19, remove the overstrike over "~~fake news story, commentary, or editorial~~"

Page 1, line 19, remove "by a public official with no expenditure of"

Page 1, remove lines 20 through 23

Page 1, line 24, replace "purpose of educating the voters on a" with "Factual information may be presented regarding a ballot question solely for the purpose of educating voters if the information does not advocate for or against or otherwise reflect a position on the adoption or rejection of the"

Renumber accordingly

Engrossed SB 2327 was placed on the Seventh order of business on the calendar.

Senator Dever
Rep. Paur

2011 TESTIMONY

SB 2327

Subject: Taxpayer Funded Lobbying Reform

Bill: SB2327

Testimony Provided By: Dustin Gawrylow

Lobbyist #160

Presented To: Senate GVA Committee

February 4th, 2011

Mr. Chairman, Members of the Committee,

Senate Bill 2327 addresses the concept known as "taxpayer funded lobbying" which is the practice of using taxpayer dollars to either advocated for more taxpayer dollars, or against tax reductions or other pro-taxpayer measures or legislation.

We have seen in the past, situations where taxpayer funded entities are actively politically. This bill would stop the practice of using public funds, public equipment, and public property against the taxpaying public's interests.

If a taxpayer funded entity wants to be politically active, they can form a PAC (Political Action Committee), raise money privately, and file campaign disclosure reports just like any candidate or other group.

This bill does not seek or intend to limit the individual rights of anyone involved in government - only to restrict the use of public funds in the campaigning process.

One area of question that would need more clarification is the issue of penalties. We don't need another law on the books that lacks a penalty. We have enough of those kinds of laws regarding open meetings and open records violations which only create more paperwork for the Attorney General's office.

It's time that the law be consistent and treat all entities equally when involved in politics, policy making, and lobbying.

Thank you.

Proposed Amendment to Senate Bill 2327

February 4, 2011

Presented by Bill Wocken

On Page 1, Line 18 of the bill delete "in any bona" and insert, in lieu thereof "by a public official with no expenditure of public funds or resources. This section may not be construed to limit the freedom of speech of any officer or employee of the state or such political subdivisions. 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."

On Page 1, delete Line 19

Proposed Amendment to SB2327

a. "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 does not include activities undertaken in the performance of a duty of a statepublic office or a position taken by a public official in any bona fide news story, commentary, or editorial with no expenditure of public funds or resources. This section may not be construed to limit the freedom of speech of any officer or employee of the state or such political subdivisions. 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.



Attachment 1
2327

Subject: Taxpayer Funded Campaigning Reform

Bill: SB2327

Testimony Provided By: Dustin Gawrylow

Lobbyist #160

Presented To: House GVA Committee

March 11th, 2011

Senate Bill 2327 addresses the concept known as "taxpayer funded campaigning" which is the practice of using taxpayer dollars to either advocated for more taxpayer dollars, or against tax reductions or other pro-taxpayer measures or legislation.

We have seen in the past, situations where taxpayer funded entities are actively politically. This bill would stop the practice of using public funds, employee time public equipment, and public property against the taxpaying public's interests.

Last session this reform was passed by both chambers, but disagreements in conference committees forced the House to kill it on approval of the conference report.

If a taxpayer funded entity wants to be politically active, they can form a PAC (Political Action Committee), raise money privately, and file campaign disclosure reports just like any candidate or other group.

This bill does not seek or intend to limit the individual rights of anyone involved in government – only to restrict the use of public funds in the campaigning process.

We would like to see amendments to this that strictly define what is education. Our suggestion would be to allow taxpayer funded entities to create "fact sheets" to refer voters who want to know more about an issue.

Another area of question that would need more clarification is the issue of penalties. We don't need another law on the books that lacks a penalty. We have enough of those kinds of laws regarding open meetings and open records violations which only create more paperwork for the Attorney General's office.

It's time that the law be consistent and treat all entities equally when involved in politics, policy making, and campaigning. The taxpayers have funded both sides of campaigns long enough.

The North Dakota Taxpayers' Association is a membership-funded advocacy group designed to get taxpayers a voice in legislative matters. NDTA is 100% in-state funded, and counts over 500 North Dakotans as current members. NDTA is the only organization with a full time lobbyist dedicated to advocating on behalf of the taxpayer.

North Dakota Taxpayers' Association

NDTaxpayers.com • 1720 Burnt Boat Drive Suite 102 • Bismarck, ND 58503 • (701) 751-2530

Introduced by

Senators Dever, J. Lee, Wanzek, Dotzenrod

Representatives Koppelman, Weiler

1 A BILL for an Act to amend and reenact subdivision a of subsection 2 of section 16.1-10-02 of
2 the North Dakota Century Code, relating to the use of state or political subdivision services or
3 property for political purposes; and to provide a penalty.

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

5 **SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 16.1-10-02 of the
6 North Dakota Century Code is amended and reenacted as follows:

7 a. "Political purpose" means any activity undertaken in support of or in opposition to
8 a statewide initiated or referred measure, a constitutional amendment or
9 measure, a political subdivision ballot measure, or the election or nomination of a
10 candidate to public office and includes using "vote for", "oppose", or any similar
11 support or opposition language in any advertisement whether the activity is
12 undertaken by a candidate, a political committee, a political party, or any person.
13 In the period thirty days before a primary election and sixty days before a special
14 or general election, "political purpose" also means any activity in which a
15 candidate's name, office, district, or any term meaning the same as "incumbent"
16 or "challenger" is used in support of or in opposition to the election or nomination
17 of a candidate to public office. The term does not include activities undertaken in
18 the performance of a duty of a statepublic office or a position taken in any bona
19 fide news story, commentary, or editorial.

Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2327

Attachment 3
2327

Introduced by

Senators Dever, J. Lee, Wanzek, Dotzenrod

Representatives Koppelman, Weiler

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16 or "challenger" is used in support of or in opposition to the election or nomination
17 of a candidate to public office. The term does not include activities undertaken in
18 the performance of a duty of a state public office or a position taken ~~in any bona-~~
19 ~~fide news story, commentary, or editorial~~ by a public official with no expenditure of
20 public funds or resources. This section may not limit the freedom of speech of
21 any officer or employee of the state or a political subdivision. This section does
22 not prohibit a public official, the state or any agency of the state, or the governing
23 body of a political subdivision from presenting factual information solely for the
24 purpose of educating the voters on a ballot question.

11.0776.01001
Title.02000

Attachment 4
2327
Adopted by the Government and Veterans
Affairs Committee

February 11, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2327

Page 1, line 18, remove the overstrike over "state"

Page 1, line 18, overstrike "in any bona"

Page 1, line 19, overstrike "fide news story, commentary, or editorial" and insert immediately thereafter "by a public official with no expenditure of public funds or resources. This section may not limit the freedom of speech of any officer or employee of the state or a political subdivision. This section does not prohibit a public official, the state or any agency of the state, or the governing body of a political subdivision from presenting factual information solely for the purpose of educating the voters on a ballot question"

Renumber accordingly

Attachment 3
2327

**LETTER OPINION
2009-L-11**

July 6, 2009

The Honorable Kim Koppelman
State Representative
513 1st Avenue NW
West Fargo, ND 58078-1101

The Honorable Dan Ruby
State Representative
4620 46th Avenue NW
Minot, ND 58703-8710

The Honorable Mike Schatz
State Representative
400 9th Street East
New England, ND 58647-7528

Dear Representatives Koppelman, Ruby, and Schatz:

Thank you for your letter asking whether state agencies or entities may expend public funds or resources to advocate for or against a ballot measure. Consistent with past opinions issued by this office, it is my opinion that a state agency or entity may not use state funds or resources to advocate for or against a ballot measure, absent a constitutional or statutory provision permitting it.

ANALYSIS

In your letter you refer to recent opinions issued by this office determining that a political subdivision may not expend public funds to advocate the political subdivision's position on a ballot measure without specific legislative authority to do so.¹ You then ask whether this

¹ See N.D.A.G. 2004-L-55 (while a school district may provide the public with neutral factual information, it may not, absent a statute, expend public funds to advocate school board's position on a ballot measure); N.D.A.G. 2002-L-61 (county commission newspaper insert went beyond fair presentation of facts relating to a pending ballot measure on whether to construct a new courthouse to advocacy by the county for passage of the bond issue; expenditure of public funds for the newspaper insert advocating the county's position was inappropriate and unlawful), available online at www.ag.nd.gov. Rather than repeat the detailed analysis of those opinions, I have enclosed copies for your easy reference.

prohibition against using public funds or resources also applies to state level agencies and entities.

Initially, it should be noted that the law is clear that public funds may not be expended except for a public purpose.² As the North Dakota Supreme Court recently said in construing the misapplication of entrusted property statute:

It is axiomatic that if public funds are spent illegally, without constitutional or statutory authorization, there is a clear risk of loss to the state. The people and the legislature, through the constitution and laws of this State, have delineated the parameters of the appropriate expenditure of public funds, and any expenditure in violation of those provisions by definition creates a loss to the government.³

One leading case has held that a state official lacks authority to expend public funds to support a state bond issue enhancing state and local facilities because, absent clear and explicit legislative authorization, a public agency may not expend public funds to promote a position in an election campaign.⁴ "A fundamental precept of this nation's democratic electoral process is that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions."⁵

While a public body may not generally expend public funds to advocate a position on a ballot measure, absent some statutory or constitutional authority to do so, courts have held that public bodies have implied power to make reasonable expenditures for the purpose of giving voters relevant facts to aid them in reaching informed decisions in voting on the ballot measure.⁶ As the California Supreme Court has noted:

[I]t is generally accepted that a public agency pursues a proper "informational" role when it simply gives a "fair presentation of the facts" in response to a citizen's request for information . . . or, when requested . . . it

² See State v. Blunt, 751 N.W.2d 692, 700 (N.D. 2008).

³ Id.

⁴ See Stanson v. Mott, 551 P.2d 1, 3-9 (Cal. 1976) (authorities have not drawn a distinction between a ballot measure and a candidate campaigning; the judicial decisions have uniformly held that use of public funds for campaign expenses is as improper in other non-candidate elections as in candidate elections).

⁵ Mott, 551 P.2d at 9.

⁶ Id. at 10-11.

LETTER OPINION 2009-L-11

July 6, 2009

Page 3

authorizes [an] . . . employee to present the [agency's] view of a ballot proposal at a [public] meeting.⁷

In addition, a trivial or de minimis use of public funds or resources would likely not be determined by the courts to constitute a violation of the law.⁸ Thus, to the extent an expenditure of state funds or resources would be used only to educate the voters through a fair presentation of the facts about a pending ballot measure, no violation would occur.

Based on the foregoing, it is my opinion that a state agency or entity may not use state funds or resources to advocate for or against a ballot measure, absent a constitutional or statutory provision permitting it.

Sincerely,

Wayne Stenehjem
Attorney General

jf/pg
Enclosures

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.⁹

⁷ Id. at 11-12 (citations omitted). See also N.D.A.G. 2002-L-61 (while newspaper insert by county may not promote passage of bond issue, county may offer a fair presentation of facts regarding a measure).

⁸ See Saefke v. Vande Walle, 279 N.W.2d 415, 417 (N.D. 1979) (trivial or miniscule uses of public property do not rise to the level of misuse of public funds or public property for political purposes); but see State v. Blunt, 751 N.W.2d 692, 701 (N.D. 2008) (relatively small individual misuses of public funds that aggregate into larger significant amounts of public funds may constitute violation of misapplication of entrusted funds statute); see also N.D.A.G. 93-L-182 ("[w]hat constitutes a 'trivial' use of state property will depend on the facts in each particular case").

⁹ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).

Attachment 6
2327

**Chairman Grande and Members of the House Committee on
Government and Veterans Affairs**

My name is Lynn Bergman. I am a resident of Bismarck and from my first excursion into politics in 1977 through today I have never addressed a North Dakota legislative committee as a paid lobbyist, only as an individual taxpayer.

The originally introduced version of this bill has, either intentionally or through unintended indifference to logic, been confused and confounded.

The Senate passed version has eliminated the bill's original intention to retain an exemption for information contained in any bonafide news story, commentary, or editorial. Fine. These freedoms are protected by the first Amendment to the U.S. Constitution. But I have to ask myself the question... what was wrong with reiterating and hence accentuating our basic freedom of the press?

Regarding the Senate's lengthy addition of verbiage at the bottom of the bill, now all of a sudden, they insist on recounting our basic freedom of speech, as if anyone ever intended to limit the free speech of anyone on their own time and with their own dime.

The last sentence of the originally introduced version of this bill states "The term (political purpose) does not include activities undertaken in the performance of a duty of a public office..." I would request that this committee change the existing reference to "performance of a duty of a state office" to "performance of a duty of an elected public official" instead of the Senate's "performance of a duty of a state public office".

A "public office" would, I believe, include elected and appointed officials. Because taxpayers have much less recourse to the actions of appointed officials, a restriction here to "an elected public official" would necessitate that only those public officials which are duly elected by the taxpayers should be given the license to speak publicly and as they view and interpret the issues associated with ballot measures. What they say publicly is accountable to the voters so they should be allowed all the rope necessary to either hang themselves or tie what they deem to be the facts into a neat bow for public consumption. Then let the voters decide if they have spoken

in the taxpayers' interest or if they have favored special interests.

Appointed public officials, however, are not directly accountable to the taxpayer and so should speak on their own time and with their own dime as related to ballot measures. When I was a public employee for four different cities, I often spoke at public hearings on those issues not directly or indirectly associated with any of my official job duties, identifying myself as a taxpayer and expressly stating that I was not representing an official public viewpoint.

I have no quarrel with the last sentence added by the Senate that allows the presentation of factual information to the public. I would, however, include the definitions of "educating", and of "indoctrinating" at the end of the bill, as follows:

Educating - Providing knowledge, facts, truth, and accurate information.

Indoctrinating - To teach to accept a doctrine of thought uncritically.

Thank you very much for indulging my opinions. If any of you have questions concerning them, I will attempt to answer them honestly but briefly.

Attachment 7
2327

Amendments SB 2327

March 11, 2011

House GVA Committee

P. 1, at line 20, remove everything after ""resources".

P. 1, remove lines 21 through 24 and insert: Factual information may be provided solely to educate the voters on a ballot question, but may not project, predict, or presume in any manner the effect of the election.

Robert W. Harms
471-0959

Attachment 8

2327

Testimony on Engrossed SB 2327
House Government & Veterans Affairs
March 11, 2011

Good morning, Chairman Grande, Members of the House Government & Veterans Affairs Committee, my name is Todd D Kranda and I appear before you as a lobbyist on behalf of Missouri River Energy Services. Unfortunately, Deb Birgen, the Manager of State Legislative Relations for Missouri River Energy Services, was unable to attend the hearing and I was asked to present her testimony in opposition to Engrossed SB 2327 along with a request for consideration of an amendment with regard to Engrossed SB 2327.

Missouri River Energy Services is a municipal power agency that provides wholesale electricity to six member communities in this state, including Cavalier, Hillsboro, Lakota, Northwood, Riverdale and Valley City. MRES appears before you today to oppose Engrossed SB 2327.

Attached is an opinion written by Attorney General Wayne Stenehjem in 2002. Basically it states that whenever cities expend money on a ballot measure or initiated measure, it may do so—but only if done “fairly and impartially.” (quoting *Palm Beach County v. Hudspeth*, 540 S.2d 147 (Fl. 1989)) This bill goes beyond what the Attorney General has stated and attempts to ban any public funds from being used to educate the public—and bans the use of public resources as well. The banning of the use of “public resources” means the city cannot even have the auditor take the time to review a proposed measure to determine the impact on the community. It is the duty of local

government, local officials and employees to represent the best interests of the community. That includes educating its citizens and speaking on behalf of its citizenry upon all actions that impact the city—whether those impacts are negative or positive.

If the bill does go forward then MRES would offer a further amendment to try to clarify that reference to a “ballot question” on line 24 includes each of the types of items that were added at lines 8 and 9. A copy of the Proposed Amendment is attached for your reference in the event the term “ballot question” is not considered to be inclusive of each of the items added at lines 8 and 9. Clarification of the meaning of the clause “ballot question” is necessary or the proposed amendment should be adopted to make clear that factual information presented for the purpose of educating the voters is not prohibited under any circumstances regardless of the type of item on the ballot.

Thank you for taking the time to consider the concerns about Engrossed SB 2327 and the interpretation concern with the proposed amendment. Missouri River Energy Services hopes that you will defeat Engrossed SB 2327 or recognize the need to include the clarification or the proposed amendment that is suggested for the bill.

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.¹

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); Elsenau 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.

¹ 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 is 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

**PROPOSED AMENDMENT TO
ENGROSSED SENATE BILL NO. 2327**

Page 1, line 24, after "a" insert "statewide initiated or referred measure, a constitutional amendment or measure, or a political subdivision"

Renumber accordingly

PROPOSED AMENDMENT
March 11, 2011

North Dakota House
GVA Committee

Chairman Grande:

P. 1, remove line 20 after "resources" through line 24 and insert:

Factual information may be presented solely for the purpose of educating the voters on a ballot question but may not presume, project, or attempt to forecast in any manner the effect of the election on the ballot question.

Attachment
1
3-18-11
SB 2327
SB

SB 2327

April 14, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2327

Page 1, line 7, remove "o initiate a statewide initiated"

Page 1, remove line 8

Page 1, line 9, remove "subdivision ballot measure or any activity undertaken"

Page 1, line 20, overstrike "a duty of a"

Page 1, line 21, after the period insert "Factual information may be presented solely for the purpose of educating the voters, provided it does not advocate for or against or otherwise reflect a position on the adoption or rejection of the ballot question."

Renumber accordingly