

2013 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2313

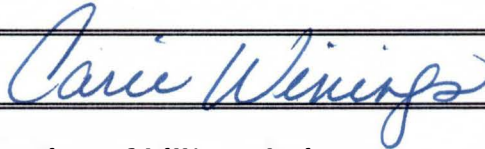
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

SB 2313
02/08/2013
Job Number 18578

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill for an Act relating to authorizing a county or a city to expend public funds to retain a lobbyist.

Minutes:

Chairman Dever: Opened the hearing on SB 2313.

Senator Armstrong, District 36: See Attachment #1 for testimony as sponsor and in support of the bill.

(3:20) Chairman Dever: Did I understand you correctly to say that only attorneys are allowed to lobby under current law?

Senator Armstrong: That is my understanding. Because they are not technically lobbyists, they are special city attorneys.

Vice Chairman Berry: I am curious if you know why the law was written the way that it is so that it allows for this but not the other?

Senator Armstrong: I think it is an attempt to not allow it. However there are so many different organizations and exceptions that do it. I think the special city attorney thing is a loophole you cannot close.

Vice Chairman Berry: What you are proposing is that there is a loophole here that we cannot close so we might as well make this fair and even the field.

Senator Armstrong: I don't think the current situation is all that bad. I think this would fix these inequalities.

Senator Cook: You have three attorneys in the Senate on this bill, and you could not find one in the House?

Senator Armstrong: I did not notice that. I did not choose them because they were.

(5:55) Patrick Finken, District 47 voter: See Attachment #2 for testimony in support of the bill.

(10:28) Chairman Dever: It would not be the first time we legalize current practice.

(10:58) Mark Johnson, North Dakota Association of Counties: See Attachment #3 for testimony in opposition to the bill.

(16:22) Senator Cook: How does the Association of Counties determine what side of an issue you are going to lobby in on?

Mark Johnson: We have three committees that meet prior to the legislative session. We have a resolutions process that occurs at our annual conference in which we adopt resolutions and vote on them by majority. Now we have one legislative committee made up of 14 individuals that meets weekly to discuss issues that are before the legislature and the positions that the counties or cities should take and we come in on a weekly basis with prior knowledge of what is going on out there with that committees input. We think the process is democratic. We generally take the approach that you don't need 3, 4, or 5 counties or cities coming in with different opinions and then you have to sort through all that. We think it is important that we come together in a consensus before you and give our position.

Senator Cook: Where can I go as a taxpaying resident of Morton County to find out how my county commissioners weighed in on the ultimate decision of the Association of Counties to take a particular position?

Mark Johnson: You could go to the county commission meeting and ask if they have taken a position or you could write a letter. You could contact the auditor. There are numerous ways.

Senator Cook: There is no website or record out there that documents that?

Mark Johnson: If you are referring to technology, we have a website and it denotes all of the positions that we have taken. There is not a separate vote count that is taken between Morton County and Burleigh County. They vote as a body.

Senator Cook: I am not sure how I am going to vote on this bill. I look at this whole process and I am trying to put this taxpayer hat on. You say you are not heavy handed, but don't you rate the legislators and how we vote on issues important to you?

Mark Johnson: We provide, at the end of the year, a voting record on critical issues as to how Senators and Representatives voted on issues that were important to local government.

Senator Cook: I am more than willing to answer to my voting record. I should have one that I am accountable to, but I think it should be even all the way across. Others that weigh in should have that voting record. Your votes should be made aware to the taxpayers. There is another issue out here and this is just touching the corner I think.

Vice Chairman Berry: How do you then address the issue of it being seemingly unfair?

Mark Johnson: I am not sure how to respond to that. I think that the process that we have allows anyone to come in and provide input and in essence sway the Association of Counties into a position that comes before the legislature. All of that is published and available. I will admit that what is going on right now is that there is more money out there than anyone knows what to do with. The feeling is to get a piece of it. This is a golden opportunity in North Dakota to take care of many unmet needs and address issues that

have long been before us. It has created this environment and everyone would like to have your attention through the course of the legislative session.

Senator Poolman: If we have the League of Cities and the Associations of Counties, why do you believe that so many of these cities still feel the need to hire their own lobbyists?

Mark Johnson: I think it is a product of being involved in a process that is made up of consensus and we come to many conclusions as to how we sit on issues by consensus. If we don't come to consensus, we back away because we want to be unified in the way we approach legislative issues. There have been numerous times when two counties are differing with each other or several feel different than several other, we have said that they could come down to the legislature and talk to you themselves.

Senator Schaible: Would you be in favor of putting what is going on already in law?

Mark Johnson: I am saying that I don't think it is necessary at this point.

Chairman Dever: Would it be your sense that to the extent that county officials come and testify in agreement with the position of the Association of Counties that they would fall under the umbrella that already exists?

Mark Johnson: We are constantly asking county officials to come to town and give you the real life situation of what is happening in the jurisdictions. Most times they are in agreement with the consensus of the association. We also encourage those that have a difference of opinion to come here and share their opinion.

Chairman Dever: You don't see them under current law being prevented to do that?

Mark Johnson: County officials can do that on their own. They don't need to be even registered as lobbyists. That is found in the Attorney General's opinion also. They are elected at the local level to represent local citizens and they have the ability to come here.

There are a few exceptions. So do register anyways. They are not required to register as lobbyists to testify.

Senator Cook: Is there going to be a county that may make a decision now to hire their own lobbyist and quit paying dues to the Association of Counties, could that happen?

Mark Johnson: Yes it could, but without saying too much, I will remind the committee that the association and the league has become much more than a lobbying arm. We provide numerous other services. We have liability insurance, workman's comp insurance, we provide technology services, and we work closely with state agencies such as ITD, Secretary of State, and the Department of Transportation to help counties deal with issues relative to state agencies. We have diversified to such a great degree beyond lobbying.

(Gives some examples)

(29:00) Connie Sprynczynatyk, North Dakota League Of Cities: I am here to answer any questions that you might have. (Gives History of league) Fargo, Williston, Minot, and Jamestown have special attorneys to address their own specific needs. That does not mean that they are not part of the league effort. We have 357 incorporated cities. Our board is 15; two from each region. The board is authorized to act as the legislative committee to take official positions. We have hearty discussions but we try to develop that consensus position. If there is disagreement within we try to disclose that to you. Any city is able to come with a position against the league of cities. We do not offer a scorecard. As the counties do, we follow hundreds of issues. You can find them on the website.

(35:29) Senator Cook: Tomorrow this will be in the paper and the taxpayers are going to look and see that their money is going to be used to hire lobbyists. What can we do to offer more accountability?

Connie Sprynczynatyk: I certainly take your point. I am not rising in support of the bill and frankly I signed in as neutral but with regard to the language of the bill, I am not particularly concerned because we have had this situation where there are assistant city attorneys hired to work on particular issues and I think that is a very well-known fact. When we hold our Friday afternoon conference call, they are either physically present in our conference room and if they are not physically there, they are on the line. They are part of the family just like anyone else. With regard to how we answer to the taxpayers, that is something that the city governing board that has to have an open public discussion about this. They have to have a recorded roll call vote. They have to act to approve this relationship if they choose to contract with an assistant city attorney. There is accountability there.

Senator Cook: What about school districts if we are doing this for counties and cities?

Connie Sprynczynatyk: I am not advocating for the bill. If you pass the bill, all I am telling you is that no matter what you do, we will continue to do what we do.

Chairman Dever: Do you consider the bill to be unnecessary or that it does harm?

Connie Sprynczynatyk: I do not believe it is necessary in the current situation. I will tell you with the regards to the cities, they do not have the spare money to hire attorneys; there is not money in the budget. I don't see a rush to that.

Senator Schaible: Does this bill make it easier for the smaller cities and counties to do this?

Connie Sprynczynatyk: There are only two cities that have full time city attorneys on staff. Bismarck was the first to hire its own as opposed to contracting. There are two dozen attorneys in the state that also do municipal law. We have an attorney on staff that provides a great deal of technical assistance. We are careful to remind the cities that we do not replace your relationship with the municipal attorney. Most are on a contract basis. I

think the vast majority of cities don't have a contractual agreement with a municipal attorney.

(46:02) Susan Bieler, Mandan Resident: Testified in opposition to the bill. We do have the League of Cities and Association of Counties to be our voice. We already pay our taxes and they are being investing in those organizations. There are also many who lobby on their own time. As a citizen, I am doing this because I have an interest in it and I want government that is accountable and accessible to the average citizen. Maybe there is no one that cares what I say, but I care about how law affects my family. I would bet the city of Mandan would jump on hiring a lobbyist to promote whatever they think they need for their government to run. We don't have a lobbyist. It is you as the Senators and Representatives that we voted for you to represent us. We need to make our needs and opinions known to you. In the grand scheme of things, to me as a taxpayer, we need you to be our voice. We don't need another lobbyist to lobby for government. We need a lobbyist to lobby for the people and we need to be represented. This looks like an expense to the taxpayer. They already can come up here on our dime and talk to you. It is not easy as a taxpayer to try and figure out how and when to come up here. This is my personal time and I don't get paid for it but it is important to me to spend my time and give my opinion. I don't see this coming from anything else than our taxes and we already pay too much. If it were state dollars, than I would be neutral on this. We have a hammer over our head and yet we have nothing in return.

(51:28) Chairman Dever: We value the testimony lobbyists provide, as well as the agencies, but the people that are affected by the laws are the most important.

Susan Bieler: Thank you.

Chairman Dever: Closed hearing on SB 2313.

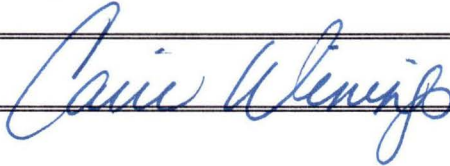
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

SB 2313
02/21/2013
Job Number 19312

Conference Committee

Committee Clerk Signature



Minutes:

Chairman Dever: Opened SB 2313 for committee discussion.

Vice Chairman Berry: My understanding was that in fact the Association of Counties and that of Cities, that was put together to try and clear up an inequity initially when there was felt to be the same problem that they feel has now come about again. Is that what I understand; that when they were first formed to put everyone on the same equal playing field, but now as things have moved forward based on the current system a similar inequity has occurred where bigger cities now are able to afford to hire folks that they call special attorney? The goal of this, because it is going on anyway, is to codify it?

Chairman Dever: It was a surprise to me that currently they are not supposed hire lobbyists unless the lobbyist is an attorney.

Vice Chairman Berry: Yes, they called them a special attorney and then they in effect lobby.

Chairman Dever: Asks Connie Sprynczynatyk to clarify some things for the committee.

Vice Chairman Berry: Restates his question.

(3:01) Connie Sprynczynatyk, League of Cities: I cannot speak for the organization of the Association of Counties although they are much younger and I should be able to remember that. The League of Cities was organized in 1912. One of the purposes was for advocacy, but the major purpose was, explained according to the newspaper accounts, for

education and sharing best practices. What has happened in the time since then, at least with regard to the four cities that have an assistant city attorney for purposes of particular issues? Fargo was the first, and that was primarily to work on water supply and flood control issues. In Jamestown's case, it is a water service dispute between the municipal system and rural water. In Williston's case, it was because of all of the issues related to the energy development impact, and also Minot for the same reason. Those attorneys are working on those issues. Do they have some involvement with the general portfolio of issues affecting municipalities? Yes, but it is not the same situation as the kind of advocacy provided by the Association of Counties and the League of Cities. That would be a fair characterization of the relationship. I have not heard of any other city that plans to do likewise. This is not our bill or the Association of Counties bill. If you pass the bill we will be doing what we are doing. This is a policy decision for the legislature.

Senator Cook: We have so much local government that costs money like property taxes, and if this is to make legal current practice, I think we ought to change it so it is not legal. I don't like the idea of local government hiring lobbyists and spending taxpayer money to come up here and lobby for money; which is generally what they are going to lobby for. I may be the only one that thinks that. I did not like this bill when I heard it and I don't like it any more now.

Chairman Dever: Any other thoughts?

Senator Cook: Moved a Do Not Pass.

Vice Chairman Berry: Seconded.

A Roll Call Vote Was Taken: 4 yeas, 3 nays, 0 absent.

Chairman Dever: Carrier.

Date: 2/21

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2313

Senate Government and Veterans 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 Senator Cook Seconded By Senator Berry

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson		✓
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais		✓
Senator Dwight Cook	✓				
Senator Donald Schaible		✓			
Senator Nicole Poolman	✓				

Total (Yes) 4 No 3

Absent 0

Floor Assignment Senator Dever

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

REPORT OF STANDING COMMITTEE

SB 2313: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO NOT PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
SB 2313 was placed on the Eleventh order on the calendar.

2013 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2313

2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee

Fort Union Room, State Capitol

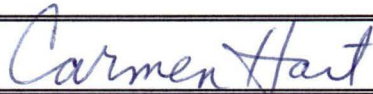
SB 2313

March 14, 2013

SB 2313

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to authorizing a county or a city to expend public funds to retain a lobbyist.

Minutes:

You may make reference to "attached testimony."

Chairman Jim Kasper opened the hearing on SB 2313. He decided to start the hearing and would hear from Senator Armstrong later.

Senator Kelly Armstrong appeared in support. **Attachment 1.** (54:47-1:00:30)

Rep. Vicky Steiner I read that in Dunn County that perhaps former Senator Nodland was going to be hired to come down and take on the Killdeer issue. Do you know if they moved forward with that?

Senator Armstrong I am assuming they didn't because I haven't seen him here.

Rep. Gary Paur You are inferring Richardton and Mott have no options. Isn't it correct that the mayor or the city council could come down and lobby? If they would need expertise advice as to who to contact, I am sure the League of Cities would furnish that. They are not locked out of the process.

Senator Armstrong I am not inferring that they don't have any options at all. They don't have the same options. The smaller the community you get into, the more time the mayor spends doing his day job and not doing mayoral job. The city of Dickinson does not have a lobbyist and the mayor and the city administrator are down here all the time. They could choose this option that exists with other cities right now.

Rep. Steven Zaiser What options don't they have?

Senator Armstrong It is hard to hire an assistant city attorney to lobby when you don't have a city attorney.

Rep. Gail Mooney We are looking at the same picture, but we are looking at it from two different sides. You referred to the smaller versus larger and the resources that are available to the larger versus the smaller. You see it as leveling the playing field. I see it

as broadening that playing field even further. I see it as exacerbating this disconnect between rural and urban even more than it is right now.

Senator Armstrong My answer to that is the city of Fargo has an assistant attorney down here doing no legal work whatsoever. I understand your position.

Rep. Gail Mooney Wouldn't that be an issue with Fargo and their taxpayers?

Senator Armstrong The city of Fargo has a lobbyist right now. They call him something else.

Rep. Gail Mooney He does have a document that says he is a lawyer?

Senator Armstrong Yes. I don't understand why you need the legal degree to be a lobbyist. I don't think they are the same profession other than that is the way they get around it.

Rep. Scott Louser What does it mean to be a lobbyist? You can be a registered lobbyist and do what versus coming and testifying as the mayor of a community? What is the difference?

Senator Armstrong The difference would be who you send down here to do it and how you as a community decide to pay for it. Instead of hiring an attorney at \$250 or \$300 an hour, you might be able to hire a guy at \$30 an hour and buy him a hotel room.

Rep. Scott Louser Why do lobbyists need to register?

Senator Armstrong I am not the person to ask for that.

Rep. Steven Zaiser You missed some discussion that you do not have to be an attorney to be a lobbyist. I don't understand the real problem here.

Senator Armstrong The city of Dickinson cannot actually hire a registered lobbyist. That is why they hire an assistant city attorney. That way they are getting around it by hiring a special city attorney who also happens to be registered as a lobbyist. It would be improper for Dickinson to hire a registered lobbyist to send down here to lobby under current law.

Rep. Bill Amerman What we are trying to do is what has already been done but we want to make it a more level playing field. What if the bill was amended to say that counties and cities cannot expend funds unless taken to a vote of the people to hire an attorney or a lobbyist to lobby on their behalf? Would that solve a lot of problems?

Senator Armstrong If you can write it in a manner that they are not going to get around, absolutely. You are addressing the issue the opposite way of which I would like it to be addressed, but, yes, you are addressing the issue.

Rep. Ben Koppelman If we were going to look at passing this and we had concerns about them doing other types of lobbying with this authority, like lobbying for their position on a

ballot measure in their local town which traditionally has been prohibited, or federal lobbying, would there be any harm to your bill if we did not include that second section?

Senator Armstrong Other than as a definition, I don't believe so. The intent is for legislative lobbying. It is not the intent to allow cities to do those other things.

Vice Chair Randy Boehning Why weren't school boards put in here?

Senator Armstrong I didn't think of school boards. I just thought of counties and cities.

Then we went to the neutral testimony.

Patrick Finken, Bismarck resident and business owner, appeared in support. **Attachment 2.** (:34-4:27)

Rep. Vicky Steiner Do you think that by these cities hiring these attorneys, possibly they are in a gray area right now?

Patrick Finken No, but if we are going to have lobbyists, let us call them lobbyists.

Rep. Vicky Steiner At the time when they allowed associations to bring in a few public lobbyists such as League of Cities or Association of Counties, they were very reluctant to even do that. This expands this even farther. You have 53 counties and the group I work for on my day job, if they were to hire somebody, generally speaking it will cost you around \$4,000 a month x 4 months at \$16,000. I am coming up with \$848,000 for 53 counties x \$16,000. Then you have 357 cities at \$16,000 is \$5 million. If every city and county took advantage of the law that you are proposing, the cost to the taxpayer would be \$6.5 million.

Patrick Finken I would argue that while your numbers are correct, it isn't a change from the status quo. Those very same counties and cities can hire special attorneys to serve in this capacity. All this law does is change that from requiring they hire attorneys to being able to really hire anyone and call them a lobbyist. As you will hear from Senator Armstrong, smaller communities aren't able to hire lawyers to serve in that capacity.

Rep. Karen Rohr Would you expound on Paragraph 4 in terms of the canon of ethics?

Patrick Finken The challenge is that by state law they are prohibited from hiring a lobbyist, the cities and counties or any political subdivision. They then turn to special attorneys to do this. The way the canons of ethics for the legal profession are is that a firm like ours can't offer lobbying services because you have to be an attorney to do it, and they can't pay it from like ours or anyone who is not an attorney to do those. Cities and counties can't hire someone who is not an attorney to do it, and you can't hire a firm that isn't a law firm because of the canons of ethics and, conversely, the cities have to hire special attorneys. It is not going to change anything for us. We are still going to do what we do.

Rep. Ben Koppelman From an individual benefit perspective, regardless of philosophy on this bill, if you are saying that you wouldn't do things any differently, so if the next city of Minot came up and this law was in place and Shane was your employee, you wouldn't be

contracting directly with the city Dickinson, for example, you would still have Shane contract individually?

Patrick Finken Correct.

Rep. Ben Koppelman Even if this law changed?

Patrick Finken Not if this law changed. We wouldn't have to play that game to make it happen, but if you don't change the law, it doesn't affect us because we would still have Shane contract directly.

Rep. Steven Zaiser Talk about the line between a lobbyist, consultant, advisor, and other terms people use.

Patrick Finken When special attorneys are hired for the purpose of lobbying, there is no difference between special attorneys and the lobbyists. I don't speak for the city of Minot. This is on my own behalf. The difference in my mind would be whether or not you are engaged directly with the legislature in trying to help craft effective legislation as opposed to everything else outside of that body would be a consultant.

Rep. Steven Zaiser You see it as narrowly defined like that?

Patrick Finken The reality is that they have the abilities to do all that under current law except lobbying. They can still hire consultants and advisors. Nothing has to really change for that piece of the puzzle. It is the direct engagement that you can only accomplish if you hire a special attorney.

Rep. Gail Mooney Who is your firm?

Patrick Finken Odney. We are an advertising public relations public affairs group here in Bismarck.

Rep. Gail Mooney You refer several times to the fact that this is happening right now. Can you give me some examples of that?

Patrick Finken There are a number of cities in the state right now that have hired special attorneys to represent them at the legislature for the purposes of lobbying for different bills or funding everywhere from Fargo, Grand Forks, Minot, Dickinson, and Williston. For example, John Olson is not an employee of the city of Fargo, but he represents the city of Fargo as a special attorney for the purpose of lobbying the legislature. John Olson is a Bismarck attorney who has several lobbying clients.

Gail Mooney Do you have examples of counties?

Patrick Finken I don't know that there is a county. It is all cities as far as what I know.

Vice Chair Randy Boehning Are we going to see a lot more lobbyists out here then?

Patrick Finken I will let the cities and counties speak for themselves. As far as what they do already for ___ just doing lobbying. The role that they play for their members has grown from just that purpose to really an all encompassing service provider across a wide front. I doubt there has little impact on their operations. If these entities want to do it, they probably just have to spend a little more, because they hire attorneys to do it. To answer your question, I don't think you are going to see that. What is driving this is extraordinary times. The city of Minot is a good example of that. They had never done this before, but between the oil impact and the flood, they felt the need to have some day to day people on the ground out here, because their city commission and mayor who all have other jobs and their limited city staff are not able to spend the time here that they need to make sure they are fairly represented in this process.

Vice Chair Randy Boehning I think we are going to see a lot more special interest out here and I think it is going to be a tug and pull from East to West, small town to big town, medium sized town, water this way and that way. I think it is the city commission's job or the council's job to come out and lobby us. Are they going to be able to hire lobbyists to lobby the county commissioners because they need a road coming into their city? Is that part of this too?

Patrick Finken In the current environment the larger cities have an unfair advantage because they are the ones who can afford to do this and not the smaller groups. Senator Armstrong's rural population he represents are underrepresented in the process because of the way the current state law is written.

Vice Chair Randy Boehning The smaller towns along with the larger towns belong to the League of Cities. The League of Cities has one registered lobbyist for sure. I think that is what all the cities should do. If they have a real big concern like the diversion in Fargo, we have city commissioners, county commissioners, diversion authorities that could send out 40 people to lobby for certain things instead of having one person here.

Patrick Finken That would absolutely be true except for the fact that the law already allows this. What you are describing is an environment where this is no opportunity for them to do that whether it would be special attorney or not. That isn't where we are at. This bill doesn't seek to expand it. It is to make sure that if we are going to call it lobbying, we call it lobbying.

Vice Chair Randy Boehning Maybe we need to do is put some money into a fund so the citizens have a lobbyist to lobby against the other lobbyists.

Patrick Finken There was plenty of citizen input when we were hired for the citizen of Minot and, mostly, supportive. While you are right if citizens want to, and these local governments, if they go through this, it should be a process that is clearly lobbying. If they have the support of their community to do so and local citizens want to use that property tax money to do it, so be it.

Rep. Vicky Steiner You mentioned Dickinson hired someone. What is the name of that individual?

Patrick Finken I think Senator Armstrong might be able to answer that.

Rep. Vicky Steiner You said it was a public open meeting when Mr. Goettle was hired. What was the contract for?

Patrick Finken It isn't just for those services. It was a 12 month contract. I think it is \$2,000 or \$3,000 a month for that and some federal work as well.

Rep. Vicky Steiner About \$24,000?

Patrick Finken Somewhere around \$30,000. It seems to me it varies during the session. It is higher and lower in between.

Rep. Gail Mooney Are you saying that the legal status of a lawyer that is hired is the equivalent of a lobbyist?

Patrick Finken No. What I am saying is that the way the state law is written, only attorneys can be hired by cities and counties for lobbying purposes. If they wish to hire someone else, they are not allowed to.

Rep. Steven Zaiser I realize that your intent for supporting the bill is make it legal for what is already happening. By the very fact that this would change, are you not going to create more special interests?

Patrick Finken I come back to the fact that it is already happening. In this environment there aren't full time lobbyists. To have the kind of culture that you have in DC where it is ongoing all the time for decades is unlikely to happen here.

Rep. Vernon Laning Being a small town mayor, our options were limited on getting lobbying done, but we would normally try to send a city employee or someone who was already on the payroll to do the lobbying and the disadvantage there was you had inexperienced personnel trying to convince illustrious groups like this one to vote a certain direction. These cities and counties are not restricted from sending their own employees. It is just in this case if they wanted to hire Joe Blow off the street to take the message because Joe Blow use to be a state senator, they could hire him for that one function, have him do that without hiring an attorney which usually carries a higher price tag. Is that not true?

Patrick Finken I would agree with that. If Senator Armstrong were here, he would tell you that one of his principal reasons for doing this is so that these smaller entities can participate not only to have a higher caliber of individual be able to do it but also to afford the opportunity that these cities actually have the resources to do it at a lower level.

Rep. Ben Koppelman I have been trying to get to the least common denominator on this. Does this really boil down to saying that a city should be able to hire whoever they think can best do the job regardless if they have a law degree or some other background to do their lobbying?

Patrick Finken In its simplest form I would say it is two parts. Yes, they should be able to hire whoever they want. It is really about making legal what is already occurring. It is legal now to do what they are doing, but it is to make it plain.

Rep. Scott Louser I am looking at the senator sponsors. If we are saying that you don't have to be an attorney to lobby if we make this change, Senators Armstrong, Hogue, and Schneider, what do they do for a living?

Patrick Finken They are lawyers.

Rep. Bill Amerman Right now you are saying cities can already spend money to hire a lawyer to come out and lobby us and all this would do is to allow them to hire somebody besides a lawyer to come out and lobby us?

Patrick Finken That is correct.

Rep. Bill Amerman Why do we need the phrase to expend city funds in this because they are already spending the city funds? Correct?

Patrick Finken I think it is to clarify the fact. Right now when they hire the attorney to do it, they don't expend funds for lobbying. They are hiring help legally and that one of their duties just happens to be lobbying.

Vice Chair Randy Boehning Why can't a city hire you as an employee to come out and lobby us?

Patrick Finken They can. They would have to do it by putting me on the payroll. With the attorneys, they can just contract for those services as a free lance attorney.

Vice Chair Randy Boehning If they can do this now, we wouldn't really need to have an attorney and still hire an attorney as a city employee. Correct?

Patrick Finken You are absolutely right. There are probably a million different ways to get around the current law.

Vice Chair Randy Boehning How come school boards weren't involved in this?

Patrick Finken If they want to, they can.

Chairman Jim Kasper I have a concern beyond legislature. Let us say a measure is put on the ballot in Cass County or in Fargo and is pushed by the city commission. Does this allow them to expend their funds to promote the issue where the citizens may not like it but do not have the ability to expend funds to try to defeat the issue?

Patrick Finken As I understand it, no. If they can, they can hire an attorney to do that now.

Chairman Jim Kasper I am talking about expending funds where they would hire a consulting firm, an advertising agency and spend \$200,000 of city dollars that are taxpayers' dollars to lobby for an item they put on the ballot that the citizens may not like

but they don't have the \$200,000 to lobby against the issue that they are using the taxpayers' funds against them.

Patrick Finken I don't believe that this recommended change in any way would enable that if it is not already possible.

Chairman Jim Kasper The bill refers to Lines 9 and 14, 2 U.S.C. 1607. It is federal lobbying disclosure act of 1995. It says prohibition of activities, nothing in this act shall be construed to prohibit or to authorize any court to prohibit lobbying activities or lobbying contacts by any person or entity. We have the wide open area in federal law, but we have a prohibition in state law. This opens the lobbying activity up and the expenditure of public funds to a much greater degree than what the bill appears to be doing.

Patrick Finken We would be willing to research that and come back with an answer to your question in that regard. That is not the intent of this bill. If that is an unintended consequence, we would be happy to look at the amendment.

Carrie Wallace, law intern, read information from John Bjornson which she later printed and distributed. **Attachment 4.** (37:20-38:02) Later on the committee received the AG opinion **Attachment 5.**

Rep. Ben Koppelman Should there be an attorney general's opinion on whether or not the hiring of attorneys and assigning them the job of lobbying as legal by a political subdivision?

Chairman Jim Kasper I think Mr. Finken has talked about that. Cities and counties can contract with attorneys on a special contract for duties and they can assign the duties to be here.

Rep. Ben Koppelman In the attorney general's opinion, it said that you can't expend public funds for the purpose of lobbying. If that is true, then for them to expend public funds to contract with or hire an attorney and assign them lobbying duties would be _ or a direct violation, one of the two.

Rep. Steven Zaiser How does this fit into election law?

Patrick Finken You are asking could they lobby for something and then use that as a vehicle to help get elected? No, because you could do it as a private citizen or as an employee of the city.

Opposition:

Mark Johnson, CAE-Executive Director, ND Association of Counties, appeared in opposition. **Attachment 3.** (41:40-48:12)

Vice Chair Randy Boehning When you reach consensus with the counties, how do you figure out the majority?

Mark Johnson The majority becomes most all of the counties that want to participate in our process, and our process is extremely open. Most of it occurs at the annual meeting in October that we hold for counties. For the last five years we have had every county represented at that meeting. We then look at and adopt resolutions relative to legislative issues. We save those for every other year. The majority is probably 90% of all the counties.

Vice Chair Randy Boehning A larger county doesn't hold any more weight than a small county?

Mark Johnson It is one county, one vote. They have never asked for weighted voting.

Rep. Ben Koppelman Your perspective is that this bill would greatly expand the number of lobbyists and be more encouraging to individual counties to hire their own lobbyists and not maybe participate as much with the association to do as a group. Do you think that legislature should do something to restrict all those that are circumventing the rules and skirting it? To me, it should be we do allow it or we don't. What is your opinion? Do you think we should have one or the other?

Mark Johnson I did not come here to have an opinion on that.

Rep. Steven Zaiser In my first session I spent a good deal of time on a Cass County issue involving historical preservation. You chose not to take a position on that because it was unique to Cass County. Right now there is nothing that would preclude Cass County or any other county from hiring a lobbyist specifically for a certain issue?

Mark Johnson No, a city can, in fact, hire a lobbyist for a specific issue. You are correct about the issue regarding historic preservation.

Rep. Steven Zaiser They still can, under the present law, hire their own consultant or lobbyist. I assume that is the reason you would support the existing law and oppose the proposed bill.

Mark Johnson That is correct.

Rep. Gail Mooney My perception is that it is not already happening. What is happening is lawyers are involved in trying to represent a county or a city for specific reasons. To me it is apples and oranges. Is that an accurate assessment?

Mark Johnson I think it is.

Senator Armstrong now appeared. Go to the top of the minutes.

Neutral: (1:12:09)

Connie Sprynczynatyk, ND League of Cities, appeared in a neutral position. There are 357 incorporated cities and the league has been in place representing cities since 1912. There are four cities with assistant city attorneys here working on specific issues. It has not

changed our workload. It has not changed our relationships. It has not changed our legislative process one bit. We have welcomed the four individuals into the family. You will not see those individuals at every hearing on every bill that impacts cities. There are just under 300 bills on our list this session which we did not introduce. The league still represents the consensus of the cities on those issues. Fargo hired John Olson about three sessions ago primarily for the work on flood control and water supply issues. We instantly brought John into the family. When Williston hired Joe Gilbertson, we did the same and that was primarily energy impact and infrastructure issues. She mentioned a couple for Jamestown and Minot and welcoming them. To characterize this as a bill that somehow changes the landscape, I am not thinking that it particularly will. It is not true that among all 357 cities they all don't have city attorney services. They don't have city attorneys on staff. Bismarck was the first one to do that. Fargo now has Eric Johnson who is considered their staff attorney, but there are a handful of firms that do municipal work so these smaller communities have relationships with the city attorney when they need them. The league has been in the business of finding the common ground for 100 years. I don't see that changing in the future whether or not you pass this bill.

Rep. Scott Louser I have the definition of what a lobbyist is in North Dakota. I am wondering what are your requirements with the Secretary of State yearly that we may not see?

Connie Sprynczynatyk We register as a lobbyist. City officials are not required to register. If you are going to represent someone else, then you are going to want to be registered. The league has five people registered to represent the League of Cities. We do the same reporting as anybody else.

Rep. Scott Louser Once you have registered and we know who you are, then what reporting requirements do you have yearly? There are expenditure reports. What else do you have to report to the state?

Connie Sprynczynatyk That is it. We file that annual report about expenditures and we pay the \$25 registration fee to the Secretary of State's office.

Vice Chair Randy Boehning Is the league similar to the counties when they are coming here to testifying in favor or against legislation? Is it the consensus of a majority of the cities?

Connie Sprynczynatyk We have a policy process at our annual fall conference and so we have some sort of founding resolutions or principals. As legislation comes up that falls under one of those resolutions, we have those weekly conference calls. We try to get somebody from law enforcement, fire service, city administration, cities of all sizes, elected officials, etc. It is a very broad group that looks at all of the issues that we think are particularly critical to cities. We try to come to you with a consensus view. If we have disagreement, although it is rare, we will tell you what the perspectives are and then we will ask those individual cities to bring their perspective to you.

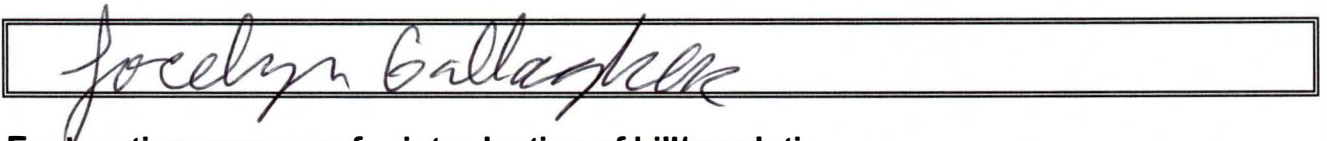
The hearing was closed.

2013 HOUSE STANDING COMMITTEE MINUTES

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

SB 2313
March 28, 2013
Job 20636

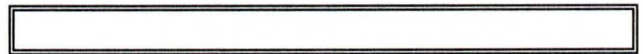
Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to authorizing a county or a city to expend public funds to retain a lobbyist.

Minutes:



Chairman Jim Kasper opened the session on SB 2313.

Vice Chair Randy Boehning: I think this is a reemployment act for retired city employees.

Rep. Ben Koppelman: State law exempts anybody who is a city employee from being considered a lobbyist.....

Rep. Gail Mooney: I would mirror what Rep. Boehning said..... urban and rural would further divide.

Rep. Marie Strinden: (2:30) I'm not sure this bill is the right fix for the problem. May be a bill to close that loophole rather than allow our subdivisions to have a lobbyist. We could amend it to say one lobbyist per city.

Rep. Gail Mooney: All counties and cities do actually have lawyers on their staff. It's not that we can't do it, it's whether or not we should be doing it.

Chairman Jim Kasper: Cass County have the pleasure of having the city commissioners, mayors, etc. out here who were elected to do this.

Rep. Ben Koppelman: I don't disagree with the sentiment but I agree with Rep. Strinden. Maybe we need to do is on line 7 and 12 insert the word not after the word to.

Rep. Vernon Laning (4:48) We're operating under that right now. They're not hiring a lobbyist, they are hiring a lawyer. I move we proceed with a do not pass recommendation.

Chairman Kasper: We have a motion for a do not pass, a second by Rep. Dockter.

Rep. Vicky Steiner: I'm going to resist that. I agree you're in or you are out. Right now we'll leave it in place that lawyers can represent the big cities. You're limiting the small cities. Washburn can't do this if they don't have a lawyer.

Rep. Scott Louser: (7:44) I been questioning what the purpose of lobbyist was if the mayor can come and do the same thing.

Rep. Marie Strinden: Grand Forks sends city councilmen down and the mayor is the guy when they need something lobbied. Rep. Mooney, does each city and county have to have a lawyer?

Rep. Gail Mooney: We have to have them by statue

Rep. Gary Paur: The reason this bill was introduced is Mr. Finken wants to get into the lobbying business for cities.

Rep. Ben Koppelman: Senator Armstrong was the one who wanted this bill for the purpose he thinks it stupid attorneys have this loophole. Again the reason is to say open this door or close it. Let's consider amending this bill.

Rep. Jason Dockter: (12:16) I would support this.

Rep. Marie Strinden: Aren't most bills self- serving for somebody?

Chairman Jim Kasper: Smaller towns could come together to hire an attorney. What do we have the League of Cities or County Associations for? They're the arm to watch the legislation and give them feedback. If we open this door, we open the door for additional property taxes at the local level because it will cost them to fund it.

Chairman Kasper: Take roll on a do not pass on SB 2313.

8-4-2 motion passes

Rep. Boehning will carry the bill.

Date: 3-28-13
 Roll Call Vote #: _____

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2313**

House Government and Veterans 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 Laning Seconded By Dockter

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman		
Vice Chairman Randy Boehning	X		Rep. Gail Mooney	X	
Rep. Jason Dockter	X		Rep. Marie Strinden		X
Rep. Karen Karls	X		Rep. Steven Zaiser		
Rep. Ben Koppelman		X			
Rep. Vernon Laning	X				
Rep. Scott Louser		X			
Rep. Gary Paur	X				
Rep. Karen Rohr	X				
Rep. Vicky Steiner		X			

Total (Yes) 8 No 4

Absent 2

Floor Assignment Boehning

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

REPORT OF STANDING COMMITTEE

SB 2313: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)
recommends **DO NOT PASS** (8 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING).
SB 2313 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2313

Testimony on Senate Bill 2313

This bill is to allow cities and counties to expend funds on lobbying. I brought this bill because the reality is that public funds are being used for lobbying is already occurring. Funds are fungible. Any organization that receives any public funding, or lobby's for federal or state monies is using taxpayer dollars for their lobbying activities. Any organization that receives tax exempt status is using taxpayer funds for lobbying activities. UND, NDSU, The League of cities, Association of Counties, township groups, etc. already have lobbyists.

Municipalities already hire special city attorneys to conduct lobbying activities.

However, under current law only a lawyer can lobby in this manner. This positions benefit larger cities whom have budgets to hire extra attorneys.

Further, these types of decisions can be made in staff meetings. Senate Bill 2313 would bring transparency to the process. These decisions could now be made at the local level, and would be the subject of open commission meetings. The idea that a municipality would spend taxpayer funds would be open to public debate.

Finally, this would allow smaller communities to hire someone from the local community to address a specific issue of particular importance, without having to contract with an out-of-town law firm or lawyer.

Kelly Armstrong

Senator, District 36

February 8, 2013

ND Senate Testimony

Subject: In favor of SB2313 - Allowing Cities and Counties to Hire Lobbyists

I fully understand the reluctance that many feel towards allowing political subdivisions to lobby state government. No one wants the public sector or any special interest to have an inappropriate role in influencing policy and budgets or overshadow the voice of citizens and taxpayers.

Yet, good lobbyists play an important role in helping citizen legislators craft effective and efficient legislation. There is no doubt that people like Connie Sprynczynatyk, Mark Johnson and John Olson provide an invaluable service to the political subdivisions they represent and to the legislature's process of policy making and budgeting.

The reality is that lobbying by political subdivisions is already occurring. North Dakota law provides an exception for political subdivision associations to conduct lobbying efforts on behalf of their members. Cities and counties are also allowed by North Dakota law to appoint special attorneys whose role is to work with the legislature. While not technically traditional lobbyists, these special attorneys do register as lobbyists with the Secretary of State.

The problem with the current state law is that a conflict exists between the state law prohibiting political subdivisions from hiring lobbyists and the legal profession's canons of ethics. Since my company is not a legal firm, we are prohibited by the canons of ethics from charging for legal services even though we employ an attorney. As a result, political subdivisions cannot contract with companies like mine for special attorney lobbying services. Nor can these political subdivisions contract with companies like mine for traditional lobbying services as it is prohibited in state law.

Obviously, we solved this problem. An employee of our firm, Shane Goettle, currently represents the City of Minot. Shane was able to contract with the City of Minot as a special attorney personally, and not through my company, thereby complying with both state law and the canons. I should be clear that while the City of Minot is a personal client of Shane's, they are not a party to this requested change.

We live in wonderful and challenging times in North Dakota. There is no question that the first line of contact between political subdivisions and legislators should be and remain with the local elected official and staff, but the challenges have prompted some political subdivisions to seek help in working with the legislature. SB2313 will bring greater transparency to the lobbying done by political subdivisions, provide a larger pool of quality service providers and eliminate a conflict that exists in state law.

Armed with this information, I am hopeful you will consider supporting SB2313.

Patrick Finken
3118 Daytona Drive
Bismarck, ND

Testimony to the
Senate Government and Veterans Affairs Committee
Prepared February 7, 2013 by
Mark A. Johnson, CAE – Executive Director
North Dakota Association of Counties

Regarding: Senate Bill No. 2313

Mr. Chairman and Committee Members, the North Dakota Association of Counties would like to provide some historical perspective to your consideration of this rather difficult issue.

The concept of separate lobbyists for separate political subdivisions was the direction our state was taking in the 1970's. As individual cities and counties felt their needs and concerns were not adequately communicated to the Legislature, a number of them sought to change that by seeking paid representation.

This began something of an "arms race" as some attempted to gain greater influence, while others chose not to engage in this way, as they felt it was likely precluded by Attorney General's opinion.

Out of that debate, came the legislation that statutorily permitted, first the Association of Counties, and later, the League of Cities. Clearly the legislative record indicates that the intent of the legislature was that those entities would be the professional representatives for the cities and counties at the legislature.

Certainly times have changed, and the ability for local officials to monitor legislation and communicate their interests and concerns are far superior to those of the 1970s. Within the course of their role as government leaders, these officials have tremendous opportunity to influence the Legislative process without paid lobbyists.

Have times changed to the degree that expanding the ability of these local leaders to hire lobbyists is warranted? That is the difficult question this bill poses. I only wish to inform the committee that this issue has been presented before, and it was addressed in a collective manner that was found acceptable for that time.

Testimony on Senate Bill 2313

This bill is to allow cities and counties to expend funds on lobbying. I brought this bill because the reality is that public funds are being used for lobbying is already occurring. Funds are fungible. Any organization that receives any public funding, or lobby's for federal or state monies is using taxpayer dollars for their lobbying activities. Any organization that receives tax exempt status is using taxpayer funds for lobbying activities. UND, NDSU, The League of cities, Association of Counties, township groups, etc. already have lobbyists.

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However, under current law only a lawyer can lobby in this manner. This positions benefit larger cities whom have budgets to hire extra attorneys.

Further, these types of decisions can be made in staff meetings. Senate Bill 2313 would bring transparency to the process. These decisions could now be made at the local level, and would be the subject of open commission meetings. The idea that a municipality would spend taxpayer funds would be open to public debate.

Finally, this would allow smaller communities to hire someone from the local community to address a specific issue of particular importance, without having to contract with an out-of-town law firm or lawyer.

Kelly Armstrong

Senator, District 36

Testimony on SB2313
Submitted by Patrick Finken
March 14, 2013

I fully understand the reluctance that many feel towards allowing political subdivisions to lobby state government. No one wants the public sector or any special interest to have an inappropriate role in influencing policy and budgets or overshadow the voice of citizens and taxpayers.

Yet, good lobbyists play an important role in helping citizen legislators craft effective and efficient legislation. There is no doubt that people like Connie Sprynczynatyk, Mark Johnson and John Olson provide an invaluable service to the political subdivisions they represent and to the legislature's process of policy making and budgeting.

The reality is that lobbying by political subdivisions is already occurring. North Dakota law provides an exception for political subdivision associations to conduct lobbying efforts on behalf of their members. Cities and counties are also allowed by North Dakota law to appoint special attorneys whose role is to work with the legislature. While not technically traditional lobbyists, these special attorneys do register as lobbyists with the Secretary of State.

The problem with the current state law is that a conflict exists between the state law prohibiting political subdivisions from hiring lobbyists and the legal profession's canons of ethics. Since my company is not a legal firm, we are prohibited by the canons of ethics from charging for legal services even though we employ an attorney. As a result, political subdivisions cannot contract with companies like mine for special attorney lobbying services. Nor can these political subdivisions contract with companies like mine for traditional lobbying services as it is prohibited in state law.

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Armed with this information, I am hopeful you will consider supporting SB2313.

Attachment 3

Testimony to the

House Government and Veterans Affairs Committee

Prepared March 14, 2013 by

Mark A. Johnson, CAE – Executive Director

North Dakota Association of Counties

Regarding: Senate Bill No. 2313

Mr. Chairman and Committee Members, the North Dakota Association of Counties would like to provide some historical perspective to your consideration of this rather difficult issue.

The concept of separate lobbyists for separate political subdivisions was the direction our state was taking in the 1970's. As individual cities and counties felt their needs and concerns were not adequately communicated to the Legislature, a number of them sought to change that by seeking paid representation.

This began something of an "arms race" as some attempted to gain greater influence, while others chose not to engage in this way, as they felt it was likely precluded by Attorney General's opinion.

Out of that debate, came the legislation that statutorily permitted, first the Association of Counties, and later, the League of Cities. Clearly the legislative record indicates that the intent of the legislature was that those entities would be the professional representatives for the cities and counties at the legislature.

Certainly times have changed, and the ability for local officials to monitor legislation and communicate their interests and concerns are far superior to those of the 1970s. Within the course of their role as government leaders, these officials have tremendous opportunity to influence the Legislative process without paid lobbyists.

Have times changed to the degree that increasing the dedication of public funds for lobbying the Legislature is warranted? That is the difficult question this bill poses. I only wish to inform the committee that this issue has been presented before, and it was addressed in a collective manner that was found acceptable for that time.

Bjornson, John D.

Did you have some questions on SB 2313

10:00 AMNDLA, Intern 09 - Wallace, Carrie

Yes, Can you tell me if there is a statute in the NDCC where it forbids cities in North Dakota from hiring lobbyists? OR where it says that only lawyers can only serve as lobbyists? I have looked at all the statutes mentioned in that bill and no luck.

10:05 AMBjornson, John D.

There is no state statute that specifically prohibits a city from hiring a lobbyist nor requiring a lobbyist to be an attorney. Under our lobbying law, 54-05.1, agents of political subdivisions, like cities, are exempt from registering as a lobbyist. I assume the bill was intended to address some concern with a city hiring a lobbyist to lobby at the federal level and to provide specific authority to expend city funds for it. i have not checked, but there could be an attorney general opinion that may be relevant.

10:09 AMBjornson, John D.

seems there may be an old AG opinion that says there is no specific statutory authorization to expend funds to hire lobbyists, thus they can't do it

10:10 AMNDLA, Intern 09 - Wallace, Carrie

Thank you very much. I shall pass this on to Chairman Kasper

10:10 AMBjornson, John D.

using public funds

10:15 AMNDLA, Intern 09 - Wallace, Carrie

Can you get the attorney general's opinion for the committee or can you tell me how to do so?

Attachment 5

2313

LETTER OPINION
98-L-152

September 30, 1998

Honorable Shirley Meyer
State Representative
HC-03, Box 78
Watford City, ND 58854

Dear Representative Meyer:

Thank you for your letter asking whether the Clerks of Court Association and the North Dakota Registers of Deeds Association may lawfully hire a lobbyist and whether Senate Bill 2002 passed by the 1997 Legislature is a mandate to the North Dakota judiciary to devise a clerk of court consolidation plan.

I will first address whether the Clerks of Court Association and the North Dakota Registers of Deeds Association may lawfully hire a lobbyist. According to the records of the North Dakota Secretary of State's office, the Clerks of Court Association has registered individuals as lobbyists for that organization in 1995 and 1993. There apparently is no record of the North Dakota Registers of Deeds Association having registered any lobbyists.

As a general matter, there is no legal impediment for organizations such as those you listed from hiring lobbyists to represent their interests in the Legislature, provided that N.D.C.C. ch. 54-05.1, concerning regulation of lobbyists, is followed. Where a legal problem does arise, however, is if a lobbyist is paid with public funds. As noted by former Attorney General Helgi Johanneson:

 Serious doubt exists as to the legality of creating a committee . . . where such committee acknowledgedly proposes to expend or actually expends public funds to engage in political activity in the form of lobbying for or against certain measures or any other form. However, if a nongovernmental committee were created and complied with the existing laws pertaining to lobbying, etc., and otherwise complied with the law, no legal objections would be raised.

Letter from Attorney General Helgi Johanneson to LeRoy H. Ernst (December 6, 1972). In a later opinion issued by this office on a related issue of whether a board of county commissioners could expend tax money for the purpose of hiring a lobbyist, it was noted:

Honorable Shirley Meyer
September 30, 1998
Page 2

This office issued an opinion on January 17, 1951, . . .
". . .as to whether it is legal for a county to hire a
lobbyist to be registered for a legislative session and to
use taxpayers money for the same".

That 1951 opinion noted that there was no statute which
granted the county commissioners such powers and went on
to emphasize that the counties have only those powers
expressly granted by statute. Therefore this office took
the position that ". . .it would be illegal for the county
to employ a person such as you mentioned in your letter
even though the same was not classified as a lobbyist".

This office has not reversed nor modified this position
with respect to the power of county commissioners to hire
lobbyists since the issuance of the 1951 opinion noted
above. . . . It is therefore the continuing position and
opinion of the Attorney General's Office that such
activities would not be an allowable expenditure of tax
dollars under present law.

Letter from Attorney General Allen I. Olson to Oscar Solberg (January
24, 1977). If a county may not lawfully use public funds to hire a
lobbyist, it logically follows that associations of county officials
also may not use public funds to hire a lobbyist.

The term "public funds" is defined in N.D.C.C. § 21-04-01(5) as
follows:

5. "Public funds" includes all funds derived from
taxation, fees, penalties, sale of bonds, or from any
other source, which belong to and are the property of
a public corporation or of the state, and all sinking
funds of such public corporation or of the state, and
all funds from whatever source derived and for
whatever purpose to be expended of which a public
corporation or the state have legal custody. The
term includes funds of which any board, bureau,
commission, or individual, created or authorized by
law, is authorized to have control as the legal
custodian for any purpose whatsoever whether such
funds were derived from general or special taxation
or the assessment of persons or corporations for a
specific purpose. The term does not include funds of

Honorable Shirley Meyer
September 30, 1998
Page 3

students or student organizations deposited in a student financial institution approved by and under the control of the school board.

The public corporation referred to in this definition of public funds includes a county, city, township, school district, and any body corporate except a private corporation. Id. Although this definition appears in the public depository chapter of North Dakota law, the North Dakota Supreme Court has recently quoted this definition of public funds with approval in Adams County Record v. Greater North Dakota Ass'n, 529 N.W.2d 830, 834 (N.D. 1995), and made it applicable to other situations.

As is apparent, this definition is quite broad; thus, any public moneys channeled to either the Clerks of Court Association or the North Dakota Registers of Deeds Association by a county or other public entity could not be used for the purpose of paying a lobbyist to appear before the North Dakota Legislative Assembly in the absence of a statute specifically permitting such an expenditure, and only then if such an expenditure otherwise conformed to other relevant provisions of North Dakota statutory and constitutional law. However, because it is my understanding that these organizations are nongovernmental entities,¹ they may utilize funds other than public funds to hire a lobbyist. For example, the individual members could contribute their own funds to be used for the payment of a lobbyist.

In view of the foregoing, and because there is no statute which would permit either a county or a nongovernmental association of county officials to use public money to hire a lobbyist, it is my opinion that the use of public funds for such activities is not lawful. However, such nongovernmental associations are free to use other unrestricted private funds for that purpose.

You also ask whether Senate Bill 2002 as passed by the 1997 Legislature mandates that the North Dakota judiciary devise a clerk of court consolidation plan. I found no provision in Senate Bill 2002 which explicitly mandates, orders, directs, or decrees that the

¹ These organizations are not mentioned or referred to in the North Dakota Century Code, unlike the North Dakota Association of Counties. See N.D.C.C. § 11-10-24. The Secretary of State's records indicate that the North Dakota Registers of Deeds Association is a nonprofit corporation. The Clerks of Court Association does not appear in the Secretary of State's records as a nonprofit corporation or other registrable entity; it presumably is an unincorporated association.

Honorable Shirley Meyer
September 30, 1998
Page 4

judicial branch devise a clerk of court consolidation plan. There are three provisions which somewhat touch on the question you raise. Section 1 of the bill appropriates \$100,000 for "[c]lerk of court consolidation funding" but does not mandate a consolidation plan. Section 6 of Senate Bill 2002 provides that

It is the intent of the fifty-fifth legislative assembly that counties use the provisions of chapters 11-10.2, 11-10.3, and 54-40.3 to combine or share the services of clerks of district court and that the judicial branch budget for the 1999-2001 biennium and future bienniums include funding necessary to efficiently fund administration of the district courts.

Section 7 of the bill amends N.D.C.C. § 11-10-02 to provide, in part:

In a county having a population of more than six thousand, the offices of clerk of district court and register of deeds may be combined into an office of register of deeds if the board of county commissioners, following consultation with the supreme court, adopts a resolution combining the offices no less than thirty days before petitions for nominations to county offices may first be filed for the primary election.

(Emphasis supplied.)

The primary purpose of statutory construction is to determine the intent of the Legislature, which must initially be sought from the language of the statute. Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990); County of Stutsman v. State Historical Society, 371 N.W.2d 321, 325 (N.D. 1985). "It must be presumed that the Legislature intended all that it said, and that it said all that it intended to say." City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940). Words in a statute are to be understood in their ordinary sense unless a contrary intention plainly appears, but any words explained in the North Dakota Century Code are to be understood as explained. N.D.C.C. § 1-02-02. Kinney Shoe Corp. v. State, 552 N.W.2d 788, 790 (N.D. 1996).

The statement of legislative intent contained in Section 6 merely provides that the judicial branch budget for the next and succeeding bienniums include funding necessary to efficiently fund administration of the district courts. While it may be advisable for the judicial branch to devise a clerk of court consolidation plan,

Honorable Shirley Meyer
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and while one might even reasonably infer that such a consolidation plan would assist the judiciary in establishing future budgets to efficiently fund administration of the district courts, the language in question falls far short of that which would be necessary to mandate a consolidation plan.

Similarly, the reference in Section 7 of Senate Bill 2002 cannot be reasonably construed to require a clerk consolidation plan. All the language of the statute provides is that in a county having a population of more than 6,000, the offices may be combined into a single register of deeds office if the county commissioners adopt a resolution combining the offices in consultation with the Supreme Court. Again, while it may be useful or appropriate for the Supreme Court to have a clerk of court consolidation plan in place to assist in consultations with such counties, the plain wording of the statute does not mandate such a plan.

Consequently, it is my opinion, based on a plain reading of Senate Bill 2002, that it does not mandate the judicial branch devise a clerk of court consolidation plan.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jjf/pg