

**Advisory Commission on Intergovernmental Relations  
August 11, 2008**

**Comments on extraterritorial zoning authority**

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As this series of hearings draws to a close, I have some additional comments on the subject of extraterritorial zoning authority. I will not repeat my previous comments.

One of the questionable provisions in some of the proposed legislation is the requirement that public hearings be held after the legislation is passed, and after the property rights have been already taken away, in short, after the damage is done. No one has ever explained the purpose of these provisions. I believe that these provisions are intended to be some kind of substitute for due process rights, but it is not even close to resembling any legitimate due process rights. To tell citizens that "by the way, the corral gate was left open last week and the horses all ran away." doesn't do any good. It is simply too late. This ridiculous provision was part of the original extraterritorial zoning law. This provision was put in to try to provide a false notion that there is some degree of due process associated with the stripping of our property rights. You need to know how this provision was handled by the cities. You are all keenly aware of the high pressure lobbying that the cities are now doing to keep this ill-conceived authority over the rural areas. This same high pressure lobbying took place when the original extraterritorial enabling legislation was passed. After the legislation was passed, the City of Bismarck went to the rural areas to hold these required hearings. At these hearings, city planners politely told the residents that the city was only doing what the legislature required them to do. The truth is that the extraterritorial zoning authority is, and was always optional. The cities did not have to take over any area. They were taking over because they wanted to do so and were not honest enough to say so. The cities lied to us, just as they lied to the various legislative committees. The cities will do whatever it takes to get their way, and to grab as much power as they can at the expense of our property rights. They Some of these proposed bills are very lengthy simply for the purpose of pulling the wool over everyone's eyes and making it difficult to understand the real intent of the proposed legislation.

Shortly after the cities began to exercise their newly gained authority over the rural areas, a number of new cities were incorporated within the state, usually directly adjacent to the existing cities that had begun exercising their new extraterritorial zoning powers. This is when a number of new cities were incorporated within the state. This happened because the cities had all the power, and the citizens had no rights. The natural, and only, solution was for the citizens was to first obtain the same level of rights given to the cities so that they could negotiate with the cities on an equal basis. The city's lobbyists immediately

ran to the legislature to stop these new cities from incorporating. During that time period, the State of Minnesota was dealing with the same issues. The Minnesota Legislature simply stopped it by saying "no new cities will be allowed to incorporate within the state". That was North Dakota's first choice, but ND had a problem because they had to somehow get around Section 21 of Article 1 of the State's Constitution.

**Article 1, Section 21.**

*No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens.*

They had to somehow get around this. North Dakota's solution was to simply make the process of incorporating a municipal corporation so complicated, costly, and difficult that no group of citizens would be able to do so and at the same time retain the appearance, a false appearance, of complying with Section 21. Now in addition to requiring expensive plats and engineering studies, the county commission has the right to simply deny the incorporation if they do not like it. This is why there have been no new incorporations in the state since then. The league of cities lobbyists have testified that incorporations were not stopped. Although that may be technically correct, the reality is that, as a practical matter, incorporations have been totally stopped. No new cities have been incorporated since that new law was passed. No group will spend the money for the engineering work, studies, etc only to have the county commission, who may have a majority of city members on it, stop the incorporation. I attended the legislative hearings when this legislation was being considered to halt any new municipal incorporations. I pleaded with the committee members to consider the reasons that these incorporations were taking place in the first place. To my disappointment, my testimony fell on deaf ears. Although I was attending a public hearing, I later realized that the real hearing, the hearing that mattered, took place in the hallways and cloak rooms in the capitol with only the paid lobbyists and legislators present. This disproportionate amount of credibility given to paid lobbyists at the expense of ordinary citizens is a disturbing trend in our government, not only at the national level, but at all levels of government. When this happens, citizens simply give up. Citizens quit taking the time to testify when their voices are not heard, and that only makes power and influence of lobbyists that much greater when the representatives only hear one side of an issue. Please do not let that happen here. The only testimony that this committee has heard over the past many months in favor of allowing extraterritorial zoning to continue, has come from the lobbyists for the special interests who will benefit by increasing their power. Please listen to the citizens.

I believe that if this conflict with Section 21 had been addressed when Apple Creek Township challenged extraterritorial zoning in the late 70's, we would not be here today discussing this problem. This committee has yet to fully address this constitutional issue. These cities have been granted privileges that are not granted to rural residents. I suggest that the committee consult with the staff attorney on this issue. To try to sell the "right" to appeal to a sham advisory board is not a substantive due process right.

There are situations in life which simply have a right, or wrong, solution, and are not suited to a compromise. This is such a situation. One must be on one side of the fence, or the other. To cop out and simply slide the extraterritorial line back to an arbitrary 2-mile limit is no solution, because most of the abuses took place within the first 2-miles. When the cities had only 2 miles, all of the abuses took place within those 2-miles. This is a conflict between citizens and a small special interest group consisting of city officials and planners. The city officials want power and authority unencumbered by any type of responsibility. The planners want the ongoing work and job security. This group does not represent the wishes of the majority of the voters, even those voters residing within their respective cities. Their original plan was to gain control over 8 or 10 miles beyond the city limits. Then they met resistance in the legislature and were initially only given 2 miles. They decided upon a strategy to ultimately get their way, using intensive lobbying, one small step at a time. This committee has heard more than enough testimony about the application of this statute to allow you to put 2 and 2 together. My concern is that the rest of the legislature, who has not heard all of the testimony will succumb to the cloak room and hallway lobbying and the citizens will lose again. Please, do not let that happen. Decisions can now be made based upon 30 plus years of experience rather than on some false, lofty projections as to how this was supposed to work.