

**Advisory Commission on Intergovernmental Relations
September 15, 2008**

Comments on extraterritorial zoning authority

Richard Hammond - Burleigh County resident

I am here today to express my disappointment with the results of the many months that this committee has spent on the matter of extraterritorial zoning. I have reviewed the draft bill dated September 2008. It is difficult to believe that this bill draft was produced by anyone who has listened to all the testimony and citizen input over the past summer. The proposed bill does not do anything to address the issues raised in this long series of hearings. It only appears that someone who is influential must have a brother-in-law in the mediation business. The rest is all wordsmithing. This bill offers nothing. The bill unnecessarily complicates the process while at the same time does not address the flawed assumptions used to justify the grant of authority to zone and control given to one group of citizens over another group of citizens against their will.

This committee heard many days of testimony from citizens throughout the state. What is most troubling is that the serious issues that have been brought up over and over again by citizens, has not been addressed. The right to vote for local representatives has been raised by many witnesses. The committee has never acknowledged this concern. The committee owes these citizens an explanation. Did the committee ever ask their legal advisor, "what about a citizen's right to vote for representatives?" Did the legal advisor ever give the committee any advice on the subject? If so, what did the legal advisor say? If the committee is going to take a firm position that this group of citizens no longer has a right to vote, then, as a minimum, the committee owes those citizens who have lost their right to vote, an explanation. The committee could say; "Your right to vote is not valid because" and explain the rationale for this decision. It was highly improper and disingenuous for the legislature to hold a series of sham public hearings when there was never any intention to consider the testimony received from the citizens. Just as a judge, presiding over a court case, is required to write an opinion or explanation for his, or her decision, this committee should provide the state's citizens with an explanation for their decisions, an explanation that addresses all the issues raised. Maybe by having to go through the exercise of preparing a rational explanation for the committee's decision that voters opinions are no longer relevant, a majority of the committee members would begin to recognize the flawed thinking that went into that decision.

The second major constitutional issue avoided by this committee is the conflict with Section 21 of Article 1 of our State Constitution. This Article is written in English. It says in part *"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." This is not a complicated concept. It is a restatement of a basic constitutional principle of equity. Again, did the committee ask their assigned legal advisor; "what about this? Does this provision apply? If not, why not?". Again, this committee owes the citizens an explanation as to what they considered, what they decided, and most importantly, why. Please give us a credible explanation as to why these important constitutional ^{issues} do not apply to this situation. Please explain and justify your decision to give in to the special interest lobbyists.

This committee has refused to recognize the fact that there are viable, capable, functioning, County and Township governmental entities in the state.

North Dakota has an admirable populist history of doing whatever it takes to protect the rights of its citizens. When the State's citizens were being fleeced by out of state banks, primarily from Minnesota, the state rose to the challenge and created the only State owned bank in the nation. The state created the State Mill and Elevator to provide its farmers with a fair price and another outlet for their crops. Those days are gone, and now North Dakota has become haven for special interests in much the same way as has the federal government.

The country of Germany had a Democracy after World War One. That democracy was lost in a few short years, not by the invasion of some foreign power, not by a civil war or revolution, but because the citizen's representatives gave away the citizen's rights, one small piece at a time. And you know the rest of the story. The voters were asleep at the switch. Today, the voters are asleep at the switch both in this state and the nation. The passage of major pieces of legislation for the benefit of wealthy and powerful special interests has become the norm. Representatives all too often treat special interest lobbyists as some kind of subject matter expert rather than the biased and selfish special interest that they represent.

The buck stops with the voter. As long as today's voter remains asleep at the switch, our legislative process will belong to the special interests. Voters today seem to have a vague understanding of a right to vote. What voters do not understand is the responsibility that goes along with that right to vote - the responsibility to be informed and continually monitor what their elected representatives are doing.

I believe that, in this series of hearings, there was no intention from the beginning to listen to the majority of the citizens who came to testify? This situation is part of a vicious circle wherein citizens simply quit appearing before legislative committees because their testimony is not considered. The absence of citizen's testimony makes it easy for the special interests to sell their agenda.

This committee has failed the citizens of this state as will the legislature. The solution to this issue is simple. Take away the ERA from the cities because the cities have not used this power in a responsible manner. The cities will never respect the rights of the non-voting rural citizens. ²