

HOUSE POLITICAL SUBDIVISIONS
FEBRUARY 11, 2021

TESTIMONY OF MARY KAE KELSCH
OFFICE OF ATTORNEY GENERAL
HOUSE BILL NO. 1305

Mr. Chairman, members of the Committee.

My name is Mary Kae Kelsch, and I am an Assistant Attorney General. I appear on behalf of the Attorney General in opposition to House Bill 1322. I am the division director for the State and Local Division of the office which, among other things, has the responsibility of writing the majority of the opinions.

There are two kinds of opinions: legal opinions and opinions regarding open record and meeting laws. Any person may request an opinion regarding an alleged violation of the open record and meeting laws, but the other kind of opinions may only be requested if there is statutory authority to do so.

For example, by statute, the Attorney General issues opinions to the Governor, state officers related to the duties of such offices, and to either branch of the legislative assembly.

There is also statutory authority for the governing body of a city or a city attorney to request an opinion. It is this authority that HB 1305 attempts to broaden. Currently, the governing body votes to ask our office for an opinion. The opinion is issued to the governing body and its attorney. No opinions issued by this office are issued to anyone in their personal capacity.

By law, it is the responsibility of the city attorney to give legal advice to the governing body of the city. N.D.C.C. § 40-20-01. Very often a city attorney reaches out to our office and asks for guidance and we provide any help that is appropriate. But it is ultimately their job to give the advice to their client. This bill would lead to attorney shopping by all city council/commission members who disagree with their attorneys.

According to the North Dakota League of Cities website, North Dakota has 357 incorporated cities. I would bet that at any given time, of those 357 cities, there are plenty of members of city councils/commissions who do not agree with their city attorneys. This bill will allow them, against the wishes of the full council/commission, to ask our office for an opinion. Currently, I have one attorney who has the political subdivision portfolio in addition to her other 19 clients. If even a quarter of the 357 cities have this situation arise, it could mean almost 90 opinion requests. This is a volume of requests our office cannot handle.

Passage of this bill would inappropriately insert the Attorney General's office into local politics. The Attorney General's office prefers to help city attorneys rather than be put in a position where we appear to second guess them.