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The Official Newsletter of the ND Township Officers Association • NATaT Member

Defense and the Future of NDTOA

On April 23, 2005 the 59th Legislative Session concluded its work with statements from the leadership indicating increases in funding for education at 57 million—71 million more for the Human Services Dept. and State employees salary increases of 4% per year for the next two years. It's a good thing we are lead by a majority of conservative Republicans.

The NDTOA started out this legislative session with a new lobbyist and found that by the end of bill introduction time, we had no bills introduced to support our last two years of grassroots developed policies.

The State Board took positive action and replaced the new lobbyist with your past lobbyist and past president, Ken Yantes, as your part time bill watcher from home. Ken kept watch by way of his computer the actions in the legislature every day during the remainder of the legislative session.

When it was necessary to defend our past policy, your State Board members and Ken went to Bismarck and defended them. A special thanks goes to Larry Syverson, Kerry Schorsch, Barb Knutson, Steve Ginsbach and Don Malcomb for their efforts at the Capitol building.

Not having any bills introduced to support our policies reduced our work load to a defensive effort, but we did a good job of defending past policy. The eight bills concerning farm home exemptions that were introduced were soundly defeated thanks to coordinated efforts with the ND Farm Bureau and the Chairman of the House Finance and Tax Committee, Representative Wes Belter.

It is more than apparent that the NDTOA must play a key role in the next Interim Tax Committee efforts or we will likely lose a great deal of the farm home exemption next session.

We devoted a good deal of effort in defending our stand on supporting a floor in the property tax formula at the 9.5% rate.

SB2188 set out to repeal the 9.5% floor in the ag property formula entirely. This would have put Ag land taxation back in the double digit increases that we had been experiencing for many years prior to the 2003 legislative action.

The result of the passage of this bill, as amended, is that the rate has been changed in a two step process for a reduction to 8.9% in 2005 and 8.3% in 2006 and thereafter. Ag land will see an increase but not as much as if the repeal of the 9.5% would have carried.

A Bill was introduced which spoke of the one cent gas tax funding to townships. The first committee meeting, in its house of origin, was attended by five representatives of your State Board of Directors ready, willing and able to defend our one cent gas tax. Representative Wes Belter indicated that it was more than apparent that we were ready to defend our funding source.

Ken Yantes assured Representative Belter that he was accurate in his assessment of the present situation.

The upcoming interim committee session will cover many important issues such as the study of HB1512 (a new way of funding education) which asks for less dependence on property taxation to fund education.

Taxation of all classes of property will be discussed in depth with an ear to assessment procedures by township and county assessors. It will be important to be present at these meetings to input township views to support our policies.

The possibility of having a full time Executive Secretary has been discussed by many county organizations during their spring meetings. Township officers present have consistently supported the establishment of a full time position and a dues raise to fund the position.

I wish to thank those county associations for having the insight to understand how important it is to do so. If the members at our next annual meeting approve funding this position and the dues increase is supported, you will have what NDTOA has grown to need—a full time lobbyist, secretary and spokesman working for you all year-round.



Please plan your county annual meeting ahead of the state annual meeting on December 5 & 6 so you can have two representatives attend to VOTE!

NDTOA Officers

DONNY L. MALCOMB, *President*
4000 338th St. SW • Berthold, ND 58718
(701) 453-3285
malcomb@ndak.net

STEVE GINSBACH, *Vice President*
16290 91st St. SE • Hankinson, ND 58041
(701) 242-7291

KENNETH YANTES, *Secretary*
P.O. Box 105 • Brocket, ND 58321
(701) 655-3530
kyantes2001@yahoo.com

NOLAN VERWEST, *Treasurer*
Rt. 1, Box 66 • Finley, ND 58230
(701) 524-1020

BRYAN HOIME, *Past President*
317 Terrace Drive • Grand Forks, ND 58201
(701) 740-8189

FLOYD MILLER, *District 1 Director*
14954 57th St. NW • Williston, ND 58801
(701) 875-4280

RALPH OLSON, *District 2 Director*
5054 47th St. NE • Maddock, ND 58348
(701) 438-2344

LARRY SYVERSON, *District 3 Director*
Rt. 2, Box 44 • Mayville, ND 58257
(701) 786-2697
las@polarcomm.com

KERRY SCHORSCH, *District 4 Director*
Rt. 2, Box 15 • New England, ND 58647
(701) 579-4703
kerry@globaladvertising.com

BARB KNUTSON, *District 5 Director*
2600 236th St. NE • McKenzie, ND 58572
(701) 673-3198
knutsons@bektel.com

ROBERT FORWARD, *District 6 Director*
8933 134th Ave. SE • Oakes, ND 58474
(701) 742-2749

BEA WALL, *NATaT Director*
6344 146th Ave. SE • Sheldon, ND 58068
(701) 680-8164
owegowalls@mlgc.com

Legal Counsel

TOM MOE, *Attorney-At-Law*
39 1st Ave. NW • Mayville, ND 58257
(701) 786-2442
thomas_moe@mail.masu.nodak.edu



President's Message *Donny L. Malcomb*

Greetings Township Officers!

Hopefully everything is going well in our township. The legislative session is over and you will see our legislative report in another section of this newsletter.

It was great fun visiting all of your county associations annual meetings. You should be congratulated on the quality of your meetings. I am sure that the township officers who attended were glad they took the time to attend.

They received valuable information in handling their township business, and also got a look at what is happening in their counties from their local county officials.

A big thank you to the county auditors and treasurer who readily accepted our form so that you can have your state association dues forwarded to us from your tax income when it comes available after the first of each year.

I might also suggest that those of you who are collecting dues for your county association also use this method of collecting your county association dues. Go to the NDTOA website and you will find a form that will allow you to do this also.

There has been some confusion with your state association dues. Nolan, our state treasurer, has been receiving a check addressed to your county association, some to the county auditor or treasurer, etc. If you have a county association please forward your dues to the county association treasurer and that person will forward your state dues to us. If you do not have a county association, forward your state dues to Nolan.

Again please consider the direct billing system through your county treasurer or auditor. County presidents please check with your county auditor/treasurer to see if they are willing to provide this service for you. I would like to take this moment to thank you for your overwhelming support of our dues increase.

We realize this is a sizeable increase in dues, but I believe you also realize how important it is to establish a full time position in our association so that we may continue and improve the benefits from your state association.

The dues increase will be decided at our annual meeting in December. Please come to that meeting for further discussion and to vote on this important decision for our state association.

Our annual meeting will be held in Minot on December 5, and 6, at the Sleep Inn.

Sorry Grand Forks, but because of the very important vote on dues and policy changes for our state association, we decided to have it at a more central location in our state. We didn't want someone to think that we took our annual meeting to one corner of the state and pass such an important decision, with someone not wanting to travel so far.

We will definitely consider Grand Forks or Jamestown for an upcoming annual meeting. Thank you, Grand Forks County Association, for your gracious offer and invitation.

Please note our notice in this publication for more information on the annual meeting. Please consider attending! If you have ideas for our convention for entertainment, workshops, resolutions, or topics for discussion, please contact us. Please check our fall *Grassroots* for complete convention details.

Problems across the state have been few. We are still having some assessor problems, I believe we will be having some workshops at our annual meeting to further address them. We are also having some problems with county policies concerning bridge and culvert replacement.

Ward County contacted me about the culvert and bridge policy Ward County has and we will be working on it through the county township association. It is not in line with what is stated in the state century code for culvert and bridge replacement and repair.

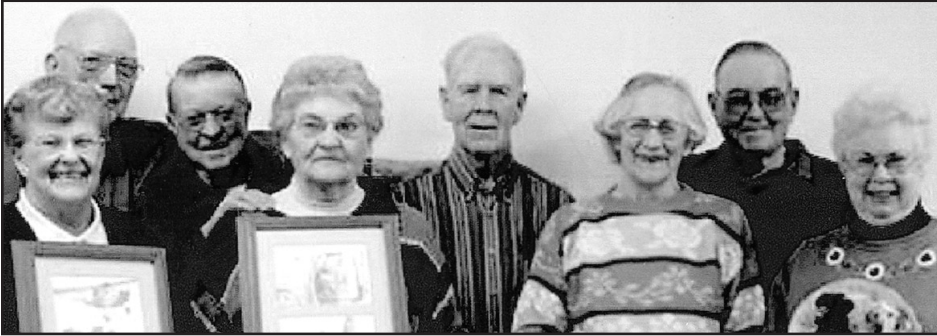
Wishing you a good spring and summer, and will talk to you again in the fall issue of our *Grassroots*. Please call if you have a problem we can address or if you would like someone to attend your county association meeting.

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155 Years of Township Service



Left to right: Francis and Vi Thompson, Raymond and Helen Vollmer, Howard and Fern Anderson, Gerald and Doris Semler.

Retired officers of Ostby Township, rural Willow City, were honored at the township's annual meeting for 155 years of combined service. Special awards were made by the current Ostby Township Board to Gerald Semler: 55 years as treasurer; Howard Anderson: 54 years as supervisor and clerk; Raymond "Buzzy" Vollmer: 28 years as supervisor; and Francis "Ole" Thompson: 18 years as supervisor.

After presentation of the awards, a special evening meal and social was enjoyed by all present. The event took place on March 18, 2005 at the Willow City Senior Citizen Center.

Secretary's Corner *Ken Yantes*

Life after the completion of the 59th legislative session will be about the same for township officers as it was before the session began. We will continue to receive the one cent per gallon gas tax and mill levies according to our annual meeting decisions made by the residents of the township. What's wrong with that?

Sounds like great grassroots government to me. The missing element here is progress. Did we stay the same or did we move forward with the rest of the world?

Our forefathers set up in our constitution a process of grassroots policy development that allows us to grow with the changes in our environment. This process allows our grassroots township officers to positively change the direction of our organization to fit the ever-changing world.

The 2003 annual meeting of NDTOA developed a policy that asked for us to remove the following wording from ND Century Code, "only pesticides that are labeled for use on forage crops may be used so the forage may be cut for hay."

The 2004 state annual meeting developed a policy which asked the ND Game & Fish Department to share some of the expense of repairing and restoring township gravel roads through a portion of all hunting licenses sold in ND.

These and other developed policies require the introduction of legislation to accomplish. This did not happen this year. Past NDTOA lobbying efforts have brought major changes such as passage of the One Cent Gas Tax Funding, reduction of the \$2,000 fine from Workman's

Compensation Bureau to \$50, restoration of the right to decide which roads should be built in a township with township money, and the Tool Box Bill which allows cooperation between our state's governmental entities to create efficiency in local government.

If it is to be a goal of NDTOA to go forward, WE must make a pledge to get our policies implemented through whatever channels necessary to make them a positive influence for North Dakota Township Officers.

On May 22, 2005 the North Dakota Township Officers lost a true friend and valuable asset. Kathleen Forward, the wife of District Six Director Robert Forward, passed away.

Kathleen had been a staunch supporter of Robert and his efforts to represent township government in District Six.

Kathleen attended most functions of state director with Robert. She faithfully attended annual meetings with Robert and even some of the board meetings of the NDTOA. Robert and Kathleen have been a part of our organization for over 15 years. Her presence at our meetings will be sorely missed.

Robert and Kathleen had been married for 50 plus years, the parents of two sons and two daughters. They lived and farmed near Oakes, ND. Her funeral was May 26th at 10:30 am at Oakes.

On behalf of the North Dakota Township Officers Association our deepest sympathies and condolences go to Robert and his family. We share your loss and your pain. We will honor the memory and loss of Kathleen. Our prayers and thoughts are with Robert and his family through this very difficult time in their lives. God Bless and be with you.

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The Country Lawyer *Thomas R. Moe, Attorney-at-Law*



Greetings to all! Township annual meetings have come and gone and it seemed like most gatherings got off without a hitch. Several townships inquired about the possibility of changing the date of the annual meeting, but the state law is pretty clear that it must be held on the 3rd Tuesday in March. It also seems like everyone has finally figured out that only those people living in the township can vote there or serve as officers.

I can tell, though, that taxes have gone up because I've heard more problems with assessing and assessors than I've noted in the recent past. Most of the time these problems arise because residents just don't understand the assessing process, nor do they understand the function of township boards of equalization. I'm hoping we can do some workshops on this topic in the near future for not only assessors, but for supervisors as well.

The ND Legislature also completed its work without too many complications for townships. Although NDTOA didn't have many bills that we were promoting, Kenny and the crew were regular fixtures in Bismarck and worked very hard on "defensive measures."

Sometimes a bill that doesn't even have the word "township" in it can still work to our extreme disadvantage, so vigilance is so important when analyzing bills for all its ramifications, and we caught quite a few of those as Kenny's report indicates.

The State Convention last year authorized the State Board to propose a statewide dues increase to especially offset our lobbying efforts. A hundred dollars per township will go a long, long way to providing our full-time presence at Bismarck. I've watched this association grow for almost twenty years and it's probably time to "kick it up a notch!"

If you haven't done a sign survey in awhile, why not try to get that done on one of these early June evenings. Grab your favorite neighbor and go for a drive. Use the forms that the Insurance Reserve puts out, or make up one of your own. The main thing is to document your work. It's a good time to travel some of the roads you personally don't normally use, too.

Following are some sample questions that have come in to the office. Have a safe and quiet summer! TOM

Q. How long is the term of the assessor?

A. If you elect an assessor it's 2 years; if the assessor is an appointed position it's 4

years; if the assessor is a contracted position the length of the term is negotiated and set by the terms of the contract. See page 176-7 of the township officer's handbook.

Q. Why can't a clerk make motions and vote at a meeting? Doesn't seem very democratic to me.

A. What kind of a meeting is it? If it's a **supervisor's** meeting then only the three supervisors are voting members. If, however, it's a meeting of the **township** (i.e. the annual meeting or a special meeting of the township) then not only can the clerk make motions and vote, but any township resident can also participate in like manner.

Q. As supervisors, we meet once a month and put in for the entire \$600 per year that is allotted by state law. Is this correct?

A. Technically, officer's pay is \$20 per day. So if you're collecting the full \$600, you are in effect stating that you met 30 times during the year, rather than just 12. I'll bet if you document the different days you check roads and culverts or answer complaints, or have to appear at the county offices, etc., you will probably have more than 30 days per year. By the way, supervisors having a stated monthly meeting is a good idea, (even if you actually don't meet on some months) as only one letter of notice per year to the county auditor probably suffices for your public notice of your meetings and besides, the clerk usually has correspondence or bills to bring up on a more regular basis, anyway.

Q. We've got a subdivision in our township which straddles a section line. There's no road there, so the residents would like to plant some grass and keep it mowed. I'm thinking we should just abandon the section line so we don't have to deal with it.

A. Usually, abandoning a section line (i.e. giving the 66 feet back to the adjacent landowners) is not a good idea, because who knows if the township board far into the future will need that right of way to put in a road, or to place utility lines, etc. Allowing the residents to plant grass seems pretty harmless, but be sure you get a written agreement that they will indeed be responsible for mowing and that they also acknowledge that someday, the township may have to reclaim the right of way.

Q. Can a township board of equalization meet without notice and the public being there? We have to get in to some very personal financial issues of people regarding their request for farm home exemption and they have to prove their off-farm income with their tax returns. That seems like private stuff and shouldn't be out in the public.

A. Unfortunately, the only meeting supervisors can ever have without prior notice is an emergency meeting. And, no meeting is ever closed to the public, unless discussing pending litigation with your attorney. I believe a conference between just the assessor and the landowner, where the landowner shows but does not provide copies of tax returns, does not fall within these guidelines however. Once documents are copied and become part of the official record, then they are probably open to the public.

Q. With the prevalence of corn and sunflowers, some of our intersections have blind corners after these crops get so tall, which creates quite a hazard. Can we control the crops at these corners?

A. On section lines, you have a 33 ft. right of way on either side of the center line. Make sure the farmer is not planting in the right of way. If on the right of way, perhaps a visit from the ditch mower is in order. If clearing to the 33 foot line does not cure the problem, then a zoning set-back ordinance is in order. Properly placed yield signs will alert the driver to the potential hazard as well.

Q. We want to buy a township mower and put on the 3 mill levy for mowing/snow equipment which the law allows. I do understand the residents have to approve this levy. Can we call a special meeting yet this summer to do this?

A. Probably not. The statute in question (handbook, page 151) specifically states that this levy is to be done at the **annual** meeting. You can bet that anyone wanting to vote "no" on this levy will point this out to you if you do try to accomplish this at a special meeting, although it surely makes sense to do it now. Perhaps this is something that our legislative committee should look at for possible amendment at the next legislative session.

Back To The Future *NDIRF Staff*

Prior to filing of the North Dakota Supreme Court's decision in Ficek v. Morken last August, most parties concerned with defending political subdivisions, including townships, had assumed the Court would join a majority of states in adopting the "public duty rule" when presented with the question. We were wrong.

Essentially, the "public duty rule" is a common law doctrine developed over time in court decisions that provides certain activities undertaken by governments are for the benefit of all citizens and, therefore, no duty exists in favor of any specific individual in those circumstances. A common exception to application of the rule arises when a "special relationship" can be established between the governmental entity and claimant.

The Ficek case involved allegations of negligence against a builder and, concerning the City of Fargo, actions of its building officials in approving a home remodeling project that later proved to have contained building code violations.

The Court rejected an attempt by the City to interpose the "public duty rule" as a defense. It stated generally that adoption of the common law rule would be inconsistent with the statutory framework

previously devised by the state legislature to govern actions against cities, townships and other political subdivisions.

In essence, since the tenets of the "public duty rule" were not contained in the political subdivision tort claims act (Chapter 32-12.1 NDCC), the Court declined to apply them.

The Court's opinion, however, appeared to invite legislative action stating "We also recognize that good public policy arguments can be made for excepting a political subdivision from liability under the circumstances of this case, but those arguments are more appropriately addressed to the legislature rather than to the judiciary...If the legislature believes certain activities conducted by political subdivisions require more stringent protection than the limitations currently provided in N.D.C.C. ch. 32-12.1, it may provide that protection."

Senate Bill No. 2265, passed by the recently concluded 59th North Dakota Legislative Assembly, seeks to do just that. The prime focus of SB2265 is to place the "public duty rule," as it has been developed over time, into the North Dakota political subdivision tort claims act (specifically, subdivisions (f.) and (g.) of section 32-12.1-03(3) NDCC).

Ironically, if SB2265 is ultimately

interpreted as it was intended, townships and other political subdivisions will hardly notice as matters will be as we thought they were prior to August, 2004 (hence the title of this article). We believe that SB2265 was important legislation, however, because its absence would surely have been felt in the form of added litigation costs.

Perhaps not surprisingly, most of the opposition to SB2265 concerned building inspection activities and issuance of building permits. Although the bill passed easily (and is in effect right now, as the emergency clause carried), we think the action of at least one North Dakota city in amending its building permit is a good idea.

The following language was added: "This permit creates no warranties with regard to construction or code compliance. The inspections under this permit are for the benefit of the public and not the Permittee and the inspections do not create a duty to the Permittee, the owner or to a subsequent purchaser with regard to quality of construction or code compliance." If your township is in the business of issuing building permits, it would be wise to consider adding similar language to your building permit form.



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