

GRASS ROOTS REPORT



MAY 2012

The Official Newsletter of the ND Township Officers Association

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Constitutional Measure 2 Holds No Real Promise of Funding for Townships

Constitutional Measure 2 holds no real promise of funding for townships.

In this issue I must talk to you about the greatest challenge townships have ever faced in North Dakota history—Constitutional Measure 2.

This measure would place in the state constitution a prohibition on taxes based on value. Value based property taxes have long been the main funding mechanism for townships.

Constitutional Measure 2 says that the state legislature must “fully and properly fund all legally imposed obligations of local government.” That’s it. Measure 2 does not define what those obligations are.

The ever more urban legislature would be entrusted with determining what “fully and properly” funding would be for your township as well as what your township is obligated to provide.

The measure also says funds will be distributed, “according to a formula devised by the legislative assembly.” Again the city elected legislators will be in charge of rural funding.

How will your township fare being included in the same formula as the city of Fargo? The urban/rural conflict aside, this formula is still problematic.

I am quite certain that your township shares some similarity with the townships next to it, but even as close as they are they are not identical.

One abuts a city, another may contain an unincorporated village which the township governs, one may be home to

an industry, perhaps a large agricultural product processing plant, some likely are just farm or pasture land with few or many residents.

Because of all those many variables I would say the formula for distribution for townships alone would fill 1,340 pages, any less would result in short funding in many townships while dumping excessive money in townships where it is not truly needed.

Why do I say that Measure 2 is the greatest challenge ever to townships? The problem is one of sheer numbers.

There are 1,340 organized townships in North Dakota and they all have individual budgets that reflect their differing local needs and resources.

Add to that number of organized townships, the counties, cities, school districts, water districts and so on, and the total number of subdivisions in the state is more than 2,100. Every one of their budgets would have to be reviewed.

Will the legislature hire an army of micro-managers and build a huge office building to house them? That would be one possibility.

Another more likely possibility is that they will simplify and cut the job down in size. How? Easy! Subtract 1,340 from the 2,100, that would leave 760 budgets

for the micro-managers to review. Dissolving the townships and having the counties handle their business would cut the number to about one third.

The smaller or lower population counties might also be forced to merge or be pushed into larger counties to further reduce the work load for the state. How far will you have to drive to ask someone for a load of gravel on your road? Will it even be any use to ask?

The Tax Commissioner estimates the property tax collection that will need to be replaced would be \$812 million annually, and that out of state property owners pay \$126 million.

The proponents of Constitutional Measure 2 say that the \$812 million, if left in the hands of the taxpayer, would cycle through the economy six times because they buy goods and services.

But what would those tax dollars do in the hands of the local subdivision governments? They buy goods and services. What the proponents are ignoring is the fact that while subdivision governments buy mostly local services, the same may not be true for individuals.

They may put the money they don't have to pay in property tax in a fund which may end up invested in another state, perhaps even China or India, gone from our local economy.



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Larry Syverson

Cont'd on page 2

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Measure 2 Cont'd from page 1

If businesses don't have to pay local property taxes, they just might end up paying more federal income tax, more money that will leave the local economy.

Add to that, \$126 million will no longer be paid into our local economy from out of state property owners. Using their six times rule, that alone is a \$756 million hit to the local economies of the state.

As I said before, the property tax that would have to be replaced from other funds by the state would be \$812 million, but there is still more cost looming.

There is an additional \$524 million of payments in lieu of taxes that may or may not be collectable if Constitutional Measure 2 passes.

These basically are fees paid by utilities, Game and Fish properties, and others, as a contract rather than paying property tax. Several of these concerns have been making their 2012 payments under protest, indicating that they will challenge the collectability of those fees if the property tax is eliminated.

Between the property tax of \$812 million and the \$524 million of payment in lieu of taxes, the state and subdivisions would come up as much as \$1,336 billion short each year.

Where would that money come from? Why not use all the oil money? Well, all the oil money amounts to \$1.02 billion per year. Even if much of the oil money was not already going to constitutional funds it could not pay the bill. There is also great danger in depending on oil funds too much.

In 2009 the price of crude dropped to within 25 cents of the trigger price, had it fallen below that price the Oil Extraction Tax would not be collectable. About half of the oil money would be gone!

Now why did I say that Constitutional **Measure 2 holds no real promise of funding for townships?** Because to meet the constitutionally required funding requirements, the legislature would likely have to reduce its previous discretionary spending, such as the Township Road Mileage payments (\$115 per mile in 2011), the "one-time payment" (\$159 per mile in 2011 and \$166 per mile in 2012).

Gone too, the possibility of anything like the \$10,000 per township in the

non-oil counties and even the oil impact funding for the oil patch.

In effect they will take the other funding townships have won over many sessions and give it to us as a replacement of our local property tax; that will be a loss not a gain.

I have heard that some farmers are going to vote in favor of Constitutional Measure 2 because of the recent increases to ag land values. They should realize that increased value does not automatically result in higher taxes.

The tax levied depends on the dollars the taxing districts require for their budgets. The main effect of the increase to ag land values will be that ag will pay more in comparison to residential and commercial properties.

That ratio had been artificially held in favor of ag land while the cap rate was at a set level and not allowed to drop. This resulted in a shift of burden to home owners. They out number us and they out vote us! So that law changed.

For those unfamiliar with the term, "the cap rate" is where the interest rate is figured in to the formula that determines the profitability of ag land which is what the tax assessment is based on. The lower the cap rate, the more profitable the land becomes.

Don't think that eliminating property tax will save farmers any money!

Remember farmers currently get a discounted sales tax rate on farm machinery and parts. Farmers also do not have to pay sales tax on field inputs: seed, fertilizer and chemicals.

These rates and exemptions are subject to revision by the urban dominated legislature, too. If the state has to start looking for funds to pay bills, look out, anything and everything will be fair game.

Farmers also depend on a great number of motor vehicles. In Montana, (a no sales tax state) tags for a Chevy S10 run \$900. What would tags be in a no property tax state?

Money has to come from somewhere if
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Executive Secretary's Corner

by Ken Yantes

I Remember . . . Do You?

I was born in Cando, ND on May 21, 1944 which was even before the hospital was built there.

I have to admit that I don't remember much about the ride home but I do remember a lot of things about my early youth in Towner County as both my parents and grandparents lived in the area and I attended Bisbee School.

Life was interesting, to say the least, when you were a five year-old-boy growing up on a North Dakota farm.

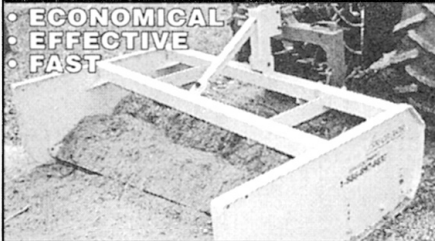
I remember when we put away the kerosene lanterns and switched on the electric lights for the first time. Boy, were they neat and clean smelling!

I remember being told of and shown the deep snows of the early 1950s. I was sure that the big "D" John Deere tractor could go through any snow bank. I found out I was wrong!

I remember concluding that surely Santa Claus wouldn't get there on Christmas due to all the deep snow. I was wrong again! Being wrong happens a lot when you are five years old.

I remember watching out of the top window in a two story house as the snowplows and the D9 Caterpillars broke

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through to make a single lane of traffic down the township road so we could get out to visit the neighbors or go to town for groceries.

Somehow it seemed less exciting than when for most of the winter our groceries came delivered to us by my uncle on his snow plane! What a fantastic piece of machinery that was and boy was it noisy, in fact, the louder the better.

Spring came and what a sight it was to see the road maintainer coming down the township road for the first time since the snow started falling last November. I would run out to the end of the driveway and watch it roar by.

I would wave at old Albert, the driver of this big magnificent machine. Boy! Was it making the road surface smooth! I vowed that some day I would become a blade man, too. It never happened—I was wrong again!

Next summer the road past our farm was raised way up. Several CATs and scrapers, trucks and road graders were put to work on this project. I didn't know that so many of those existed much less to be working in my field of vision.

Boy! What a treat to watch! The road was raised up so much that when I stood on one side of it in the ditch I couldn't even see the field on the other side.

I asked one of the workers why all roads weren't rebuilt this high and he told me that this road was special as it was a county line. He said that both counties and townships were contributing to fund the project.

Can you guess what my next question was? What is a township?

How many of you can remember when you first found out what a township was?

HANDBOOKS/UPDATES

If you need a new Township Officer's Handbook or update, please contact Ken Yantes, P.O. 104, Brocket, ND 58321-0104 or call (701) 655-3513 or email: ken@ndtoa.com. There is a limited supply of new 2012 township handbooks available at the state office. The new books are priced at \$15.00 per copy, per member township and \$30 per book for non-members. We also have a limited number of updates available to those who have purchased the green handbooks in the past. There is a \$5.00 shipping and handling charge.

The Country Lawyer

by Thomas R. Moe, Attorney-at-Law



Greetings! “*Spring has sprung, the grass has ris, I wonder where the flowers is?*” I learned this rhyme when I was very young, and it took a while for me to learn there was no such word as ‘ris’!

Spring is definitely upon us and farmers are taking to the fields with a vengeance.

Annual township and equalization meetings have come and gone and I had several townships call with questions about their meetings. As we discussed on the workshop tour, officers should always remember to ask themselves the question--‘which meeting am I at?’

Is it a meeting of all of the residents of the township?

... or is it a meeting of the supervisors acting as the board of equalization?

... or acting as the zoning commission?

... or acting as the board of supervisors in their typical role?

These are all separate bodies (although with the same people attending) and all with separate meeting requirements and responsibilities.

We have had numerous requests for information and problem-solving from townships in the oil patch. This fastest growing part of our State generates lots of attention and headaches for our western townships.

Seems like the township officers that are the most successful are those that are able to be pro-active with the oil companies and associated businesses, rather than waiting for problems to arise and then attempt to seek out the ones in charge.

Underground pipeline placement has been a problem, for example, and townships should attempt to procure a written agreement as to responsibility for road damages both during the pipeline installation and for future damage costs and expenses due to pipeline removal and/or maintenance.

The political season is also upon us, so pay close attention to those candidates

who are asking for your vote. Ask them if they understand the needs of townships and the role that our state’s townships play in the whole scheme of things. And, make sure you understand the ramifications of Measure 2 (on the upcoming June election) as to how that measure would affect our township’s ability to maintain local control.

Have a safe summer! Following are a few of the questions I’ve received in the office. TRM

Question: Can townships donate money to a private entity? We have a local medical charity event that needs some additional funds, and it’s a good cause.

Answer: Probably not, as township funds are all the result of taxes and fees--which are public funds. Even if the annual meeting approved--it’s not a proper use of public funds. Maybe if the township road had to be closed during the event, the township could provide the signage, etc.

Question: We’ve got a landowner that wants to put a tile drainage pipe under a section line road. What should be our procedure?

Answer: Get an agreement from him that speaks to paying for damages to the road during the installation and for future expenses for possible pipe maintenance. Similar to the oil pipeline discussion above.

Also, you should inspect the work so that no drop-offs, etc., are present that would be a danger to the public using the road. Finally, make sure the tile drainage plan is workable so that no township ditches are continually wet with standing water which could lead to eventual road deterioration.

Question: Our township has our own road grader and we hire one of our residents to operate it. Can that person also be a supervisor?

Answer: There’s nothing in the law that I can find that would prohibit an employee from being elected and serving as a township officer--as long as he meets the residency requirement, of course.

Also, items of discussion and action taken on his salary, etc. would require him to abstain from those types of decisions.

However, if the employee that is serving as a supervisor chooses to contract to provide services to his township, then different rules apply.

Those rules are found on **Page 218** in your new 2012 NDTOA Officer’s Handbook in **Section 58-05-12**.

Question: What’s the difference (in zoning) between a ‘conditional use permit’ and a ‘variance’?

Answer: A conditional use permit allows a landowner to use his property in a different way than what the zone allows. For example, a farmer’s spouse wants to operate a beauty shop inside the farm home.

This would be a commercial entity in an agricultural zone. The zoning body could allow it “conditioned” on the beauty shop getting all the health department licenses, etc.

A variance allows the landowner to ‘vary’ from a certain zoning requirement, but still is within the concept of the zoned land use.

For example, the zoning ordinance says that all trees, buildings, grain bins, shops, etc. must be at least 50 feet from the edge of the road-- and the landowner requests that due to a hillside, he would like his new shop to be 40 feet from the road.

The zoning board could allow this ‘variance’ from the rules if it felt the request was reasonable and wouldn’t be a safety or “snow catcher” issue.



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Indemnification and Additional Insured Status A message brought to you by NDIRF

Almost any written business agreement (contract) will likely contain some type of indemnification and additional insured status provisions.

These contract clauses can range from fairly innocuous to quite onerous in their requirements. NDIRF's member political sub-divisions should request that these indemnification clauses and additional insured requirements be removed from agreements when their purpose is for the political subdivision to indemnify and/or add the other party as an additional insured.

Why? From our research, current opinion is that North Dakota political subdivisions do not have express or implied statutory authority to provide such indemnity or additional insured status to another party except in very limited specific cases.

Your legal counsel should be consulted regarding the appropriateness of indemnity clauses and additional insured status in agreements where these clauses will benefit another party.

NDIRF is not aware of relevant case law in North Dakota addressing this issue but there is a North Dakota Attorney General's opinion that discusses contractual indemnity requirements of political sub-divisions (Letter Opinion 2009-L-04), stating they lack authority to indemnify other parties unless statutorily authorized to do so.

In our view, requiring additional insured status may be seen as tantamount to requiring an indemnity and therefore should be considered similarly.

The only statutory exception we are aware of that authorizes indemnity and, possibly, additional insured contract requirements is found in § 40-05-01(59) NDCC. If there are additional exceptions with which you are familiar, we would appreciate your advice on their citation.

Since there are at least some instances where political sub-divisions are authorized to provide contractual indemnification or extend additional insured status, as described above,

NDIRF coverage does include contractual indemnification.

We will typically provide additional covered party (additional insured) status for other parties, when requested by our members, in written contracts.

It should be borne in mind, however, that the NDIRF does not intend to waive any defense a member has available in disputing the legality of these clauses.

This means that if it is found a member did not have the statutory authority to indemnify another party in a specific instance, the NDIRF coverage will not respond to the party that was to be indemnified or provide that party any added covered party status.

From a risk management standpoint, we suggest NDIRF members have indemnity clauses and additional insured status requests that benefit another party eliminated from any contract.

If these requirements are not eliminated, we strongly advise that any party who might have an expectation of indemnity and/or additional insured status be advised by your entity that the NDIRF does not waive any available defenses, including legal inability of your entity to agree to such contract provisions.

If you have any questions regarding this information, please contact Ross Warner at the NDIRF office.

Measure 2 Cont'd from page 2

we are going to have roads, fire departments, senior services, sheriffs, and jails to lock up criminals and anarchists.

Now if Constitutional Measure 2 was like any other law passed by the legislature or even initiated by the voters, it could be revised or repealed by the legislature if it was found to be unworkable.

But this is not like any other law; it amends the state constitution. The only way to change it is by another statewide vote of the people. It could take four or more years for a repeal effort to bring it to a state wide vote.

How much damage could defunding the state and its subdivisions do in four years? We would have a crippled state that only an anarchist could love and call home.

Is that the true goal of this movement? To turn the state upside down, tie us up in court for years with funding battles, and in the mean time we have an unfunded, weak, ineffectual, non-government—a situation approaching

anarchy. We can only hope that is not the motive or effect.

It would not be prudent to lock township funding into the state constitution with no proven method for necessary funding.

This contest is very winnable but it will take your vote. Don't take this issue for granted, the quality of rural life in North Dakota is at stake. **Please remember to vote! Get your family, friends and neighbors to vote also!**

Should you personally, or for your business, like to support the opposition of Constitutional Measure 2 you can contribute (**private funds only**) online at **keepitlocalnd.com** or mail a check to: Keep it Local North Dakota, P.O. Box 2639, Bismarck, ND 58502.

That website has current information on the issue, a list of things you can do, and a place where you can request a yard sign to show your opposition.

Do not use or contribute any township funds!

Treasurer's Report

by Barb Knutson, Dist. 5 Director and Treasurer



It is time for another newsletter. It was great to see all of you at the workshops. We had great attendance and interest. That really makes it worth the effort.

We are about education and this was an opportunity to share that education with those who attended.

Dues are coming in at a good rate. Thank you! By this time you should have all received the funds that our lobbyists, Larry Syverson and Ken Yantes, fought and won for us.

One more time, it would not have happened if we had not been at the table where the decisions are made. Your dues make that possible.

Dues are due May 1 and delinquent October 1, in case you missed the by-law change in the last newsletter.

Just a reminder to get the annual reports in to the auditors if you have not already done so. It is important to get them in timely so the auditors can get the officer changes recorded and do what they do with the information we provide them.

It is really important to get the new officers and their addresses turned in, so they will receive the *GrassRoots Report* newsletter as soon as possible.

Also, I might remind you the annual transportation report should have gone to the state tax department. They will accept our financial statement for the prior year, which is helpful. Any questions on this, give me a call or e-mail.

If you haven't done so yet, educate yourselves as to the ramifica-

tions of Constitutional Measure 2, and to the devastating effects it would have on our state, city, county and township governments as we know them.

Please help educate those you meet with, as to the dangers that are identified with this irresponsible endeavor.

It is not a tax cut, it is just placing it somewhere else and would, in the end, cost all of us much, much more. It would place the control at the legislative level.

Thank you all for the work you do. It is important to our state!

Please vote on June 12th!

MR. TOWNSHIP

By Ken Yantes

With all the travel to county township officer meetings this spring, we have run into many old friends and some great individuals.

When attending the Cass County Association meeting in Casselton, I looked up from the table I was working at and to my surprise there in front of me stood one of NDTOA's founding fathers.

I reached out my hand to shake his and said, "Hello Hank, I saw your picture in the paper last night."

He said, "I bet you didn't." I replied that I had been working with some of the township archives and had come across a 1977 township newsletter, the *Grassroots Forum*, in which he was on the front page standing by his 2040 John Deere. With a sparkle in his eye Hank said, "You did see me in that picture."

He remembered the article as clearly as if it was yesterday in which he had spoken of the importance of the establishment and continuance of a township officers state association.

Representative Hank Weber had served his constituents for 15 years in the ND Legislature and was known there as **Mr. Township**.

NDTOA gives an annual award to honor a township officer that has done outstanding service to his township, county or state.

We called this award The Mr. Township Award in honor of Hank Weber and the exceptional effort he put out for us. In the legislature, his title, Mr. Township, came from his dedication to the causes of rural government.

He was a farmer, a township super-

visor and a state legislator and still has those exceptional qualities about him. He discussed our current problems with the degree of understanding that can only come from serving in those positions with undying dedication.

He was quick to advise our lobbyists to speak out to the legislators and let them know of the needs of rural citizens and to be proud that you have done so.

Hank walked away from our group with his head held high and with perfect posture, only to turn his head and wink at us ... as a father would do to a son... inferring that we should continue to represent our grassroots membership as we have done in the past and to continue to do so in the future.

A VERY BUSY SPRING for the NDTOA by Ken Yantes

Township officers! Your state association has been really busy the last several months.

We started out the season by holding 15 off-legislative season workshops all across the state. We passed out a new total handbook update to those officers that had previously purchased a handbook from us.

President Syverson had dedicated several weeks of his time updating all of the legislative changes from the 2011 legislative session into the new handbook.

He did a great job and I wish to thank him for this monumental and time consuming task. We must also thank the North Dakota Insurance Reserve Fund for funding the printing costs for our updated handbook.

Larry and Ken have attended many of the eight state-wide Trans-Action Three meetings as members of the NDDOT Directors Advisory Committee. We made some suggestions for change that will be submitted to the citizens in another round of meetings in June asking for your input to improve the level of service provided to the citizens of North Dakota.

I don't think another State Department of Transportation is as concerned about what the citizens want as the NDDOT. Please take part in these meetings as your thoughts and ideas count.

The NDTOA Board of Directors, myself and, especially, President

Syverson have been going to as many of the county meetings as possible. These visits have been to tell you, our members, what we are doing and to ask you what else you would like us to do.

Your lobbyist team, Ken and Larry, attended the Special Legislative Session in November 2011. Have you noticed that we were successful in increasing your funding for road maintenance efforts?

Near the first of June all of the non-oil producing townships should see the \$10,000 per township payment that was promised in SB2371 which passed the Special Legislative Session with only one dissenting vote.

Townships have never received as much funding before, but on the other hand, they have never had as much damage to their infrastructure as we have now.

Please use these funds to fix your roads. Don't just put it away in an account. These funds must be used for their intended use or we may never see funding like this again.

Larry and Ken have been attending the Taxation and Transportation Interim Committee meetings to keep abreast of the legislative proposals that are cropping up. You should be aware that there are several bill proposals that would do away with the farm home exemption.

Measure 2 has been a hot topic in my little corner of the world as I have

received many phone calls and e-mails encouraging us to work hard to seek defeat of this issue. The voting delegates at our 2011 annual meeting passed a resolution which called for opposition to the passage of initiated Measure 2.

Many cried out if it isn't broke why try to fix it? Is it really that broke that we would go this far into the unknown to try something different? How many other states have done this? **NONE!**

Larry has been very busy providing factual testimony as to the effects this measure would have on the whole state if it passes. **Please vote on June 12.**

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Available at Lowe's Printing, Inc. in Minot, ND. Please call (701) 852-1211 or 1-800-760-2529 ND toll free and ask for Shelly.

Available are Election Ballots, Meeting Minutes, Treasurer's report, Mileage forms, Income sheets, register of township warrants, T2, T3, and Poll and Tally sheets.

All forms with the exception of election ballots and mileage forms are printed on 32# white ledger stock and are drilled 3-hole for standard loose leaf binder.

Election ballots and mileage forms are in pads of 25 sheets.

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Co-editor: Kathy Holte
kholte@srt.com

Check out our website: www.ndtoa.com

Are your newly elected township officers receiving this newsletter? Please let us know when to add and/or delete a name from our mailing list. Send your information to:

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Phone: 701-673-3198 Email: barbk@ndtoa.com

1. Your name, title, mailing address and phone number.
2. Your township name and county.
3. The name of the person you replaced on your township board.

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